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RELEVANT DOCKET ENTRIES

1/ 2/72 Petitioner-Appellant filed motion and notice for ex. of time to & incl. March 30, 1972, to file the Record on Appeal.

1/18/72 Court Order Delivered Granting Period to & Incl. Jan. 31, 1972 for Purpose of Submitting the Necessary Supporting Documents to Accompany Such Motion as Required.

1/31/72 Appellant filed Certified Copies of Order of Contempt, Notice of Appeal (11-3-71), Order prohibiting practice of Law, Notice of Appeal (11-4-71) Notice of Appeal (11-12-71) & Motion for Extension of Time (12-8-71), accompanied by Affidavit of Virginia Klapheke, official court reporter.

2/ 1/72 Court Order Delivered Sustaining Motion for Ext. Time to & Incl. March 30, 1972 to File Record on Appeal.

2/ 9/72 Respondent-Appellee filed not. & mot. for leave to correct the judgment under RCr 10.10. See Court Order 2-21-72.

2/17/72 Appellant filed response & notice to motion to correct judgment.

2/21/72 Appellee filed reply & notice to appellant's response to mot. to correct judgment.

2/21/72 Court Order Delivered Sustaining Motion to Correct Judgment & Ordering Correction Made Within 20 days Fro mThis Date.

2/25/72 Appellant filed Not. & Motion to Substitute Robert A. Sedler as counsel of record for appellant and to strike Stuart Lyon as his counsel. See Court Order 3-9-72.

3/ 1/72 Appellee-Respondent filed notice & Corrected Judgment and Certificate of Contemptuous Action in the Presence of the Trial Court,

3/ 9/72	Court Order Delivered Substituting Robert A. Sedler as Attorney for Petitioner & Deleting Name of Stuart Lyon as Attorney.
3/30/72	Appellant filed affid., not. & mot. for addit. time to & incl. April 6, 1972 to file record on appeal. Sustained SS ht 4-13-72.
4/13/72	Appellant filed Statement of Appeal, $25.00 filing fee, and 1 vol. of Transcript of Record, and notice and motion of appeal. Sustained & Final Ext. to & Incl. 6-13-72 Grantd SS ht 5-30-72.
5/16/72	Appellant filed not. & mot. for ext. time up to & incl. June 13, 1972 to file brief.
6/13/72	Appellant filed briefs & notice.
6/26/72	Appellant filed not. & mot. to subst. corrected brief (attached). (Agreed to July 18, 1972) (Sustained SS ht 7-18-72).
7/18/72	Appellant filed corrected briefs & notice.
7/21/72	Appellee filed not, & mot. for ex. of time to file brief to & incl. Aug. 25, 1972 with affidavit in support of. Sustained SS ht 8-3-72.
8/10/72	Appellee filed not. & mo. to dismiss.
8/10/72	Appellee filed briefs and notice.
8/11/72	Submitted.
8/21/72	Court Order delivered passing mot. to dismiss to the merits.
8/29/72	Appellant filed Reply Briefs & Notice.
9/14/72	Appellant filed Not. & Mot. for Oral Argument.
3/14/73	Affirmed in Part and Reversed in Part (Comm. Catinna)
4/19/73	Appellant filed Petition for Rehearing & Notice.
4/26/73	Appellee filed Response & Notice to Appellant's Petition for Rehearing.

5/ 3/73 Appellant filed not. and motion for stay of enforcement of Mandate pending review by U. S. Supreme Court (See Court Order 5/22/73).

5/22/73 Court order del'd passing for further consideration Appellant's mot. to stay execution of the mandate in connection with the Court's determination of the merits of the Pet. for Rehearing.

6/15/73 Court Order del'd granting Appellant mot. for stay of execution & enforcement of the mandate to & incl. 9/14/73—pending Appellant's Application for Writ of Certiorari, etc. (See Court Order 9/17/73).

6/15/73 Petition for Rehearing Overruled.

9/13/73 Appellant filed Not. & Motion for extension of Ct. Order of June 15, 1973 Stay Mandate, until such times as U. S. Supreme Court has considered & Disposed of the Pet. for Writ of Certiorari.

9/17/73 Court Order del'd denying Appellant's Motion for an ext. of Court's previous order staying for 90 days the execution of its mandate.

6/15/73 Mandate Issued.

ORDER GRANTING PETITION FOR CERTIORARI
December 3, 1973

No. 73-473 Taylor v. Hayes

The petition for a writ of certiorari is granted limited to Questions 1, 2 and 3 presented by the petition which read as follows:

"1. When a trial judge summarily imposes consecutive sentences on eight counts of contempt aggregating four and one-half years' imprisonment, including sentences of one year's imprisonment on two counts, whether he or the appellate court may subsequently, in order to defeat the alleged contemnor's right to trial by jury, reduce the sentences so that the sentence on no one count exceeds six months' imprisonment and direct that the sentences run concurrently for a total of six months' imprisonment?

"2. When alleged contempts have been committed by an attorney in the presence of the trial judge and the trial judge proceeds summarily to punish for contempt, whether due process requires that the attorney be given some opportunity to be heard in defense or mitigation before he is finally adjudged guilty and sentence is imposed?

"3. Whether, in the circumstances of this case, the trial judge could impartially sit in judgment on multiple contmpt charges against the petitioner?"

OPINION OF THE COURT OF APPEALS OF KENTUCKY
March 23, 1973
494 S. W. 2d 739

CATINNA, Commissioner.

Daniel T. Taylor, III, appeals from a judgment and order of the Jefferson Circuit Court, Criminal Branch, Second Division, finding him guilty upon eight charges of contempt and committing him to the City of Louisville Jail for a total of three years and five months. He further appeals from an order of the same court prohibiting him from the further practice of law in that particular court because he had been theretofore found guilty of contempt of court.

The charges of contempt against Taylor result from his conduct in the defense of Narvel Tinsley. Narvel Tinsley and his brother, Michael Tinsley, were jointly indicted and charged with the murder of two police officers. The Tinsleys were black men while the police officers were white. The murders created some considerable sensation in Louisville, and feelings in the different communities were very pronounced. The news media tended to publicize each and every phase of the events surrounding the murders, and there was some apparent cooperation on the part of the authorities, as there is mention made of live television coverage of the site where the murders were said to have been committed. A news conference, with television coverage, announced the arrest of the Tinsleys. Later Narvel Tinsley escaped jail, and again newspaper coverage was overly abundant. It was in this situation that the joint trial of Narvel and Michael Tinsley was finally commenced on October 18, 1971.

Daniel Taylor, III, represented Narvel Tinsley while Michael Tinsley was represented by Attorneys Fleming, McCall, and Scott.

The trial lasted from October 18 through October 29, 1971, with Sunday excepted, and it was in the course of this trial that Taylor committed the offenses which were considered contemptuous in nature by the court. The particular acts of contempt as specified by the court in a "Corrected Judgment and Certificate of Contemptuous Action in the Presence of the Trial Court" were as follows:

"Contempt 1. Mr. Taylor, in questioning a prospective juror, on the second day of Voir Dire, repeatedly ignored the Court's order not to continue a certian line of questioning and to ask his questions to the jury as a whole. He evidenced utter disrespect for prospective jurors.

"Contempt 2. The Court sustained the Commonwealth objection on the use of a prior statement to cross examine Officer Hogan and not to go into the escape of Narvel Tinsley. Mr. Taylor repeatedly and completely ignored the Court's ruling.

"Contempt 3. During the playing of a tape recording of a voice of witness David White, Mr. Taylor wrote on a blackboard. After the playing of the tape it was ordered that the blackboard be removed from the Court and Mr. Taylor was advised by the Court that he could use it in his final summation to the jury. Mr. Taylor was disrespectful to the Court by his tone of voice and manner when he replied, "I'll certainly keep that in mind, your Honor.'

"Contempt 4. During cross-examination of Narvel Tinsley, by Mr. Schroering, Mr. Taylor interrupted and moved for a recess, was overruled by the Court, and then became most disrespectful to the Court and refused to take his seat at counsel's table as ordered.

"Contempt 5. Complete and utter disrespect by Mr. Taylor in the questioning of Mr. Irvin Foley, an

attorney and Legal Advisor to the Louisville Police Department when he continually disobeyed the Court's ruling regarding a press conference which the Court had ruled on unadmissible (sic). Mr. Taylor accused the Court of disallowing admittance of black persons in the Courtroom during the examination of this witness and made a statement in the presence of the jury inferring that only white police officers could enter the courtroom. It has always been the Rule of the Court that there will be no interruption during the examination of a witness or during closing arguments by people coming and going into and from the Courtroom, which rule was known to Mr. Taylor.

"Contempt 6. The witness Jesse Taylor, a Louisville Police Officer, read a statement by witness, David White. A Ruling was made by the Court that the statement spoke for itself, had been introduced in evidence and could not be commented on by Officer Taylor, who merely took the statement. Mr. Taylor continued to disregard the Court's order and ruling by continually reading parts of the statement out of context.

"Contempt 7. Mr. Taylor in examining Mr. Norbert Brown, again referred to a press conference that the Court had previously ordered him not to go into. He also waved his arms at the witness in a derogatory manner indicating the witness was not truthful and showing utter contempt of the Court's ruling.

"Contempt 8. The Court directed Mr. Taylor to call his next witness. He called Lt. Garrett, Louisville Police Department. After this witness was sworn and took the stand, a deputy sheriff advised the Court that Mr. Taylor's aide was not searched, as everyone else had been upon entering the Courtroom. Mr. Taylor ordered the deputy to search his aide. The Court or-

dered Mr. Taylor to begin his examination, which he refused to do until he was cited for contempt in the Court's chamber.

"Contempt 9. Mr. Taylor repeatedly asked the same question of witness Floyd Miller that the Court had held improper. He was also disrespectful in his tone of voice when referring to a certain police officer as 'this nice police officer.'"

We have examined the entire record of the Tinsley trial, and it becomes immediately apparent that even before the trial had "gotten off the ground, so to speak," Taylor had embarked upon a plan or program designed to disrupt the trial and by any means possible cause the trial court to commit trial errors which might form the basis of an appeal. His actions were such as to clearly illustrate that they were deliberate, delaying, or planned disruptive tactics which did in fact create such an atmosphere in the court that he, if permitted to continue, would have appeared to be the star performer in the center ring of a three-ring circus. He constantly harrassed the court by innumerable objections, statements, and requests for conferences in chambers, and, in truth, the record indicates that a great percentage of the trial time was consumed by the court and counsel attending speeches made by Taylor in the court's chambers.

As the trial progressed, there was a constant refusal on the part of Taylor to desist in his arguments, some in the presence of the jury and some at the bench. He refused upon occasions to maintain his seat so that the orderly processes of the court were available to the defendants. He continuously disregarded the court's orders and directions concerning the examination of jurors or witnesses and persisted in repetitious questioning and argument with both jurors and witnesses. Taylor launched a long tirade seeking to have the court remove opaque screens that had been

placed over the windows and doors so as to lend some degree of privacy to the proceedings and protect the participants in the trial from the disconcerting demonstrations which we being conducted in and around the building. Taylor claimed that by the screening of the windows and doors his client was not receiving a public trial. Later, he made a monumental production of the fact that the court was refusing to admit spectators in crowds, claiming that by reason of this policy his client was not receiving a public trial. Again, the clearing of the back two rows of benches in the courtrooom following laughter, noise, and other disruptive practices by the spectators was claimed by Taylor to be prejudicial to his client's receiving a fair trial.

There is no necessity of detailing the innumerable acts of Taylor which clearly reflected his contempt for the court as well as the judicial system of this Commonwealth. His actions were such as to place on trial the entire judicial system of the Commonwealth and those judges sworn to uphold its Constitution and laws and thereby assure defendants, a fair, orderly, and speedy trial.

Taylor was overbearing, contemptuous, and obnoxiously persistent in his questions and objections, and his misconduct was such that those attorneys representing Michael Tinsley, claiming that his antics prejudiced the rights of their client, were continually objecting to his tactics and moving the court that a severance be granted. The incidents necessitating objections on the part of Michael Tinsley's attorneys were so persistent and so constant that rather than consume the time of the court in a constant repetition of the rather involved objection and motion, the parties got to the place of calling it "Objection No. 1." We find all through the record this Objection No. 1 made on behalf of Michael Tinsley.

In the light of the entire record this court can only conclude that Daniel Taylor was guilty of each and every con-

tempt as charged by the court, and if the court had so desired there could have been numerous other charges assessed in the course of the trial. In spite of Taylor's contemptuous conduct throughout the trial, we do not find at any point in the record an occasion where Taylor made any personal attack upon the judge, his integrity, or ability. On the contrary, Taylor was polite to the point of almost being condescending. At no time was his conduct of such a nature as to create a personal controversy between him and the court.

Throughout his brief, Taylor complains continuously of the conduct of the judge. He is identified as "an activist seeking combat" and charged with an actual intent on his part to purposely "bait" Taylor beyond the endurance of any lawyer to accept such vilification and abuse. The judge is charged with exercising an "uncontrollable animus" toward Taylor during the entire proceedings and with fighting him on a personal basis because he was attorney for Narvel Tinsley. Taylor's brief says that such charges are grave, and this court agrees with him to the extent of saying that the brief in itself demonstrates something less than complete and total respect for the judicial system of this Commonwealth. Our examination of the record fails to substantiate in the least any of the charges of misconduct on the part of the court that were discussed and complained about in Taylor's brief. In fact, we reach a contrary conclusion, for it seems to us that the court "leaned over backwards" in an effort to assure Narvel Tinsley a fair trial in spite of the misconduct of his attorney.

The contempt citations and the sentences coming at the end of the trial were not and could not have been a surprise to Taylor, because upon each occasion and immediately following the charged act of contempt the court informed Taylor that he was at that time in contempt of court. All of these acts were committed in open court and made known to Taylor at the time of their commission and, therefore, he

cannot now complain that he was unaware of the nature of the charged contempt. Cf. Cooke v. United States, 267 U. S. 517, 45 S. Ct. 390, 69 L. Ed. 767 (1925). The conduct of the judge throughout the trial was motivated by his efforts to maintain order in his courtroom and to see that the trial was properly conducted. The court was never the "activist seeking combat," but rather he appeared to be continuously on the defensive in his effort to contain Taylor to the point where the defendants would be assured a fair trial.

Upon completion of the trial, the case was submitted to the jury which returned verdicts finding each of the Tinsleys guilty and fixing their punishment at death. After the verdicts had been returned, but before the jury was discharged and while it was seated in the jury box, the following proceeding took place:

"The Court: Mr. Taylor, the Court has something to take up with you, sir, at this time.

Mr. Taylor: Well, I'll be right here, Judge.

The Court: I've for two weeks sit here and listen to you. Now, you're going to listen to me. Stand right here, sir.

For two weeks I've seen you put on the worst display I've ever seen an attorney in my two years on this court and 15 years of practicing law. You've quoted that you couldn't do it any other way. You know our court system is completely based upon, particularly criminal law, the Doctrine of Reasonable Doubt. That's exactly what it means, reason. It doesn't mean that it's based upon deceit; it doesn't mean that it's based upon trickery; it doesn't mean that it's based upon planned confusion.

Sometimes I wonder really what your motive is, if you're really interested in the justice of your client, or if you have some ulterior motive, if you're interested in Dan Taylor or Narvel Tinsley.

It's a shame that this court has to do something that the Bar Association of this State should have done a long time ago.

As far as a lawyer is concerned, you're not. I want the jury to hear this; I want the law students of this community to hear this, that you're not the rule, you're the exception to the rule—

Mr. Taylor: (Interrupting) Thank you.

The Court: I want them to understand that your actions should not be their actions because this is not the way that a court is conducted. This is not the way an officer of a court should conduct itself."

The court thereupon sentenced Taylor on nine counts of contempt aggregating in all four and one-half years. However, this court permitted the trial judge to file a corrected judgment by which Taylor was sentenced upon eight charges of contempt for a total of three years and five months in jail.

The right of the courts of this Commonwealth to maintain order by punishment for contempt has been a part of our law for a great number of years. In 1882 the right to punish for contempt without the intervention of a jury was recognized as fully established by the rules of the common law and therefore a part of the law of this state. Arnold v. Commonwealth, 80 Ky. 300.

A short time later contempt was defined in these words:

> "Civil contempts are those quasi contempts which consist in failing to do something which the contemnor is ordered by the court to do for the benefit or advantage of another party to the proceeding before the court; while criminal contempts are all acts in disrespect of the court or its process, which obstruct the administration of justice, or tend to bring the court into disrepute." Wages v. Commonwealth, 13 K.L.R. 925 (1892).

An even more recent definition of contempt and one which fits Taylor like a glove is found in United States v. Seale, 7th Cir., 461 F. 2d 345 (1972), at page 371, where the court said:

> "On the positive side of the obstruction question, failure to heed the directive of the court to desist from arguing, to sit down, or to remain quiet may indeed constitute an actual material obstruction to the administration of justice. The unmistakable implication of In re McConnell, 370 U. S. 230, 235, 236, 82 S. Ct. 1288, 8 L. Ed. 2d 434, is that defiance of the court's order to cease questioning would have actually obstructed the proceedings. As governor of the trial, the trial judge must have the authority necessary to ensure the orderly and expeditious progress of the proceedings. His directives in exercise of this authority must be obeyed; otherwise the clear result would be courtroom chaos. Wholly arbitrary limits on argument will, if prejudicial, merit reversal of the substantive case, but that hardly can excuse open defiance of the court's commands. * * * We do not say that automaton-like reflexive obedience to the court's order is necessary to avoid a contempt citation. The law does not expect unhuman (sic) responsiveness. A certain amount of leeway must be allowed. But where the directive is clear, the judge's insistence on obedience is not undercut by his further rejoinder, and the party directed understands what is being asked of him, he must obey. * * *."

Taylor was so conclusively guilty of contempt, committed in open court in the presence of the judge, that under the present laws of this Commonwealth, we would have no difficulty in affirming the judgment of the trial court.

However, Taylor's claim that his rights under the 6th and 14th Amendments to the Constitution of the United

States have been violated requires that we re-examine the action of the trial judge upon these points. Taylor claims that the trial judge was so personally involved in controversy with him that he could not impartially sit in judgment on the contempt charge. The Supreme Court has held that a trial judge is disqualified to act on a contempt charge in situations where he has become personally embroiled in the controversy as an "activist seeking combat" or by reason of personal attacks upon the judge which in themselves carry a potential for bias.

In Offutt v. United States, 348 U. S. 11, 75 S. Ct. 11, 99 L. Ed. 11 (1954), a fourteen-day trial was marked by an intermittent continuous wrangle between the trial judge and counsel for one Peckham. The court and Offutt were continuously arguing concerning the admissibility of evidence and the conduct and demeanor of each. The examination of witnesses was characterized by accusations and cross-accusations of the raising of voices, shoutings at one another, the waving of arms, and the making of unseemly gestures, all of which indicated that the court had become embroiled in the trial to the extent of carrying on a running fight with counsel for the defendant. It was really difficult to segregate the individual involvement of counsel and the court.

At the end of the trial the court declared Offutt guilty of contempt in open court and ordered him committed to the jail for a period of ten days. The United States Court of Appeals reduced the term to be served while the Supreme Court reversed the entire conviction. Such was reversed upon the ground that the trial court had become so deeply involved personally in the trial that his personal animosity toward Offutt was such that he could not impartially judge either the contempt or punishment of Offutt.

This case has been cited time and again for the theory that where a judge becomes personally involved, or

is "an activist seeking combat," he is thereby disqualified to act further. We do not find that here the trial court was an "activist seeking combat" with Taylor or otherwise. There is no evidence of personal embroilment or any type of controversy with Taylor. However, Offutt causes some considerable concern because in that case the court, in discharging the jury after the trial, made statements to them concerning Offutt's conduct and disrespectful performance and intimated that he should not be a member of the legal profession. The Supreme Court, in discussing the court's demonstrated bias and lack of impartiality, stated that these remarks made to the jury revealed his feelings toward the lawyer on whom he had to pass sentence.

The statements made in Offutt are somewhat similar to the statements made by Hayes in the presence of the jury and immediately prior to his sentencing Taylor. However, we do not take these statements as clearly demonstrating bias. The court had cited Taylor upon the contempt charges immediately upon his commission of the acts and at no time during the trial had the court made known to the jury that he had cited Taylor for contempt, much less the reasons for such citations. Here the remarks made by the court touching upon Taylor's conduct were more akin to a declaration of a charge against Taylor based upon the judge's observations and not a constitutionally disqualifying prejudgment of guilt.

The other disqualifying situation involves those events where the trial court is the object of a personal attack which in itself is of such a nature as to carry a potential for bias and thereby disqualify the judge from acting upon the contempt proceeding.

In Mayberry v. Pennsylvania, 400 U. S. 455, 91 S. Ct. 499, 27 L. Ed. 2d 532 (1971), the Supreme Court reversed a state criminal contempt sentence of eleven to twenty-two years on the ground that the due process clause of the 14th Amendment required a public trial before another judge,

viz.—that the trial judge was disqualified because of personal attacks upon him. We do not feel that this case has any application here for upon that trial the trial court was characterized as a "dirty sonofabitch," a "dirty, tyrannical old dog," a "stumbling dog," and told to "shut up" and "go to hell." The rule of Mayberry has been followed consistently, and probably its two most recent and famous proponents are the opinions in United States v. Seale, U. S. Court of Appeals, 7th District, 461 F. 2d 345 (1972), and In re Dellinger, U. S. Court of Appeals, 7th Circuit, 461 F. 2d 389 (1972). Of course, none of these latter cases has any application to the situation presently before this court, as it is crystal clear from the record that at not time did Daniel Taylor ever indulge in any personal attack of any kind upon the judge.

We might add one other distinguishing feature which we have noted in all of the cases cited above, and that is the fact that in none of them was the contemnor at any time during the trial notified that he was in contempt of court but rather the court waited until the conclusion of the trial and then, "out of the clear blue," cited the contemnor on numerous counts of contempt and forthwith passed sentence.

Taylor was warned upon each occasion of his contemptuous action and of the court's holding that he was in contempt. Therefore, the action of the court was not an unexpected event.

Although we have discussed the disqualification of the trial judge and the circumstances of disqualification, we feel that a great deal of consideration should be given to the holdings of the Supreme Court in Ungar v. Sarafite, 376 U. S. 575, 84 S. Ct. 841, 11 L. Ed. 2d 921 (1964). Ungar, an attorney, was a prosecuting witness in a state criminal trial. However, he sought to exercise rights which he claimed to have as an attorney to dictate to the court the types of questions that he would answer, questions he would not answer, and to require rephrasing of questions if he did not

like them. He constantly refused to heed the court's instructions to answer questions and was argumentative and critical of the court's rulings. Ungar was cited for contempt and the court, without the intervention of a jury, sentenced him to ten days' imprisonment and imposed a fine. Ungar claimed his constitutional rights to a fair hearing were violated because the contemptuous remarks made by him were a personal attack upon the judge which necessarily biased and disqualified him. However, the Supreme Court held that Ungar's strong objections to the orders of the court and his conduct during the examination and a flat refusal to answer questions when directed by the court, together with his intemperate and strongly worded comments on the propriety of the court's ruling, were not sufficient grounds upon which to bottom the constitutional rule of disqualification. The court further held that the characterization of Ungar's conduct as contemptuous, disorderly, and malingering was at most a declaration of a charge against him and was not a constitutionally disqualifying prejudgment of guilt.

We are of the opinion in this case that although the remarks of Judge Hayes were inappropriate, in the light of the obvious guilt of Taylor these remarks were not such a showing of bias as to require the disqualification of the judge.

Taylor claims that under KRS 432.260 the court could not imprison him for more than thirty hours without the intervention of a jury.

This section limits contempt punishment to a maximum fine of $30 or imprisonment for not more than thirty hours without the intervention of a jury. The constitutionality of this section has been seriously questioned upon a number of occasions. A similar section, KRS 421.140, fixes the maximum punishment of a witness charged with contempt at a fine not exceeding $30 and imprisonment not exceeding 24 hours.

In Arnett v. Meade, Ky., 462 S. W. 2d 940 (1971), we held that the limits prescribed by KRS 421.140 materially interferred with the administration of justice and were, therefore, unconstitutional. Although efforts have been made to distinguish KRS 421.140 and KRS 432.260, we believe that such is a distinction without a difference. We have now concluded that for the same reasons as set out in Arnett v. Meade, supra, the limitations imposed by KRS 432.260 likewise constitute material interference with the administration of justice and, therefore, we hold such limitation to be unconstitutional.

Taylor next claims that even if the court had the authority to summarily sentence him for contempt, a sentence of three and one-half years without the intervention of a jury violates the 6th and 14 Amendments of the Constitution of the United States. Taylor is rather loose in his designation of the sentence imposed which he has tended all through this appeal to designate as three and one-half years. The truth of the matter is, as shown by the record, that Taylor was sentenced on eight separate charges of contempt, six of said sentences being for six months, one for ninety days, and other (sic) for sixty days. As we total all of them we, of course, come up with three years and five months. However, as far as this court is concerned we will treat them as separate sentences and not as a totality and shall so discuss them.

The Supreme Court has held upon a number of occasions that criminal contempt occupies the same position as any other criminal offense on the question of whether or not the contemnor is constitutionally entitled to a jury trial. If the offense was "petty," with the sentence being not more than six months, a jury trial was not required while if the offense was "serious," with the sentence being in excess of six months, the contemnor was entitled to a jury trial.

In Bloom v. Illinois, 391 U. S. 194, 88 S. Ct. 1477, 20 L. Ed. 2d 522 (1968), the court held that in contempt pro-

ceedings where there was no maximum penalty, as we now have held, the seriousness of the offense for the purpose of determining whether or not a jury trial was constitutionally required is determined by the penalty actually imposed.

In Frank v. United States, 395 U. S. 147, 89 S. Ct. 1503, 23 L. Ed. 2d 162 (1969), the court held that sentences for criminal contempt up to six months may be constitutionally imposed without a jury trial, while in Cheff v. Schnackenberg, 384 U. S. 373, 86 S. Ct. 1523, 16 L. Ed. 2d 629 (1966), the court ruled that sentences for criminal contempt exceeding six months may not be imposed by federal courts absent a jury trial or a waiver thereof.

As these rules are based upon the constitutional right of a party to a trial by jury, they would apply equally to proceedings in a state court. It might be well to add at this point that there was not before the court in any of the cases cited the question of what is termed "aggregate sentences" for the purpose of determining the constitutional right to a trial by jury. No sentence meted out upon the charges against Taylor exceeded six months. Therefore, in the light of the cases above cited, Taylor was not constitutionally entitled to a trial by jury, and the sentences were not violative of any of his constitutional rights.

In United States v. Seale, U. S. Court of Appeals, 7th Circuit, 461 F. 2d 345 (1972), the court reaffirmed the rule that the 6th Amendment right to trial by jury applied to serious criminal contempts and that in determining whether or not such contempt was "serious" the courts were required to look at the penalty actually imposed. The court then held that for the purpose of determining whether or not a contemnor was entitled to a trial by jury it would be necessary to look to the aggregate of the sentences and not to the sentences separately. In other words, the rule in Seale is such that we must total the penalty imposed by each sentence for the purpose of determining whether or not a contemnor is constitutionally entitled to a trial by jury.

Taylor claims that the rule in Seale is controlling in determining whether or not his criminal contempt was serious and the sentence thus invalid because he was not granted a jury trial. The trial court on it original charges of criminal contempt ordered that the sentences be served consecutively. This court permitted the trial court to later file a corrected judgment reducing the number of acts of criminal contempt charges and amending the sentences imposed.

The corrected judgment does not direct that the sentences, as amended, be served consecutively; therefore, they must be served concurrently. Thus, the totality of the sentence actually imposed is a jail sentence of six months.

Seale does not apply here, for no matter how we aggregate the sentences we always come up with a total penalty of six months in jail. In Bloom v. Illinois, 391 U. S. 194, 88 S. Ct. 1477, 20 L. Ed. 2d 522 (1968), the guidelines established by the Supreme Court predicate the constitutional right to a jury trial upon a determination of the penalty actually imposed.

The penalty actually imposed on Daniel Taylor is six months in jail. He was not entitled to a jury trial. Frank v. United States, 395 U. S. 147, 89 S. Ct. 1503, 23 L. Ed. 2d 162 (1969).

We hold that the sentences imposed on Daniel T. Taylor, III, must be served concurrently; viz.—one six month jail sentence, and except for this holding the judgment of the lower court adjudging him in contempt of court and fixing the penalty for each act of contempt is hereby affirmed.

Finally, Taylor appeals from an order which provided that as he had been found in contempt of court he was henceforth prohibited from the further practice of law in Jefferson Circuit Court, Criminal Branch, Second Division.

This court has for a number of years exercised the sole right to fix requirements for admission to the Bar and has likewise had the exclusive authority to discipline or disbar

attorneys. Cf. Ratterman v. Stapleton, Ky., 371 S. W. 2d 939 (1963).

However, long before the court assumed jurisdiction of disciplinary actions, suspension was not a permissible punishment for criminal contempt and this has been the rule in this Commonwealth since Adams v. Gardner, 176 Ky. 252, 195 S. W. 412 (1917).

The order and judgment prohibiting Taylor from the practice of law in the Jefferson Circuit Court, Criminal Branch, Second Division, is hereby reversed.

Palmore, C. J., and Milliken, Osborne, Reed, Steinfeld, and Stevenson, JJ, sitting.

All concur.

ORDER OF THE COURT OF APPEALS OVERRULING PETITION FOR REHEARING
June 15, 1973

Petition for Rehearing Overruled—June 15, 1973

THE COMMONWEALTH OF KENTUCKY
The Court of Appeals
73 Term—March 23, 1973

Daniel T. Taylor, III

v.

John P. Hayes, Judge Jefferson Circuit Court

File # W-311-72

Appeal from a judgment of the
Criminal Branch—2nd Division
Jefferson Circuit Court
144805

AMENDED MANDATE

The Court being sufficiently advised, it seems the judgment herein is erroneous in part.

It is therefore considered that said judgment be affirmed in part and reversed in part with directions to correct the judgment in conformity with the views expressed in the opinion herein, and that the appellee recover of the appellant ten percent damages on that part of the judgment

affirming and superseded herein; which is ordered to be certified to said court.

It is further considered that the appellee recover of the appellant its costs herein expended in this court.

A copy—Attest:

(s) Frances Jones Mills. C. C. A.

Issued June 15, 1973.

CORRECTED JUDGMENT AND CERTIFICATE OF CONTEMPTUOUS ACTION IN THE PRESENCE OF THE TRIAL COURT

March 2, 1972

I hereby certify that the following contemptuous actions were committed in the Commonwealth vs. Narvel Tinsley and William Michael Tinsley, which trial commenced October 18, 1971, and continued from day to day, except Sunday, thereafter through October 29, 1971. This court finds that the acts, statements and conduct of Daniel T. Taylor, III, the defendant in this contempt judgment, and the attorney on behalf of the defense for Narvel Tinsley, constitute (1) an attempt to prevent by improper means the proper functioning of this court; (2) a deliberate attack upon the administration of justice; and (3) mis-conduct by an attorney at law in practice before this court as would be calculated to destroy all respect for this court both by attorneys at law in practice before this court and by members of the general public if such mis-conduct went unnoticed and unpunished. The Tinsley case involved the trial of two black men on a charge of murdering two white, City of Louisville Police Officers. Mr. Taylor, on behalf of Narvel Tinsley, attempted to make a "Political" trial thereof and his misconduct, as hereinafter set out, made the task of keeping order in the court room and proceeding with a proper and fair trial to both the defendants and the

Commonwealth most difficult. It would be quite difficult for this Honorable Court of Appeals to understand and fully appreciate the full extent of Mr. Taylor's mis-conduct because this could be learned only from actual presence in the courtroom throughout the trial and actual observation of the manner in which Mr. Taylor conducted himself. Not unmindful of the fact that a transcript of record cannot express the tone of voice, derogatory expressions, and manipulation of hands and body, I am hereby making the entire transcript of testimony and proceedings, and the official tape recording of this trial as the record in this case. Although there is no comparable rule in the Kentucky Rules of Criminal Procedure, the following Certificate of Contempts are patterned in accordance with Fed. Rules Cr. Prac. Rule 42:

Contempt 1. Mr. Taylor, in questioning a prospective juror, on the second day of Voir Dire, repeatedly ignored the Court's order not to continue a certain line of questioning and to ask his questions of the jury as a whole, He evidenced utter disrespect for prospective jurors (T.E. 335-347).

Contempt 2. The court sustained the Commonwealth objection on the use of a prior statement to cross examine Officer Hogan and not to go into the escape of Narvel Tinsley. Mr. Taylor repeatedly and completely ignored the court's ruling (T.E. 1071-1080).

Contempt 3. During the playing of a tape recording of the voice of witness David White, Mr. Taylor wrote on a blackboard. After the playing of the tape it was ordered that the blackboard be removed from the court and Mr. Taylor was advised by the court that he could use it in his final summation to the jury. Mr. Taylor was disrespectful to the court by his tone of voice and manner when he replied, "I'll certainly keep that in mind, your Honor" (T.E. 1355).

Contempt 4. During cross-examination of Narvel Tinsley, by Mr. Schroering, Mr. Taylor interrupted and moved for a recess, was overruled by the court, and then became most disrespectful to the court and refused to take his seat at counsel's table as ordered.

Contempt 5. Complete and utter disrespect by Mr. Taylor in the questioning of Mr. Irvin Foley, and (sic) attorney and Legal Advisor to the Louisville Police Department when he continually disobeyed the court's ruling regarding a press conference which the court had ruled on unadmissible (sic). Mr. Taylor accused the court of disallowing admittance of black persons in the courtroom during the examination of this witness and made a statement in the presence of the jury inferring that only white police officers could enter the courtroom. It has always been the rule of this court that there will be no interruption during the examination of a witness or during closing arguments by people coming and going into and from the courtroom, which rule was known to Mr. Taylor, (T.E. 1950-1955).

Contempt 6. The witness Jesse Taylor, a Louisville Police Officer, read a statement by witness, David White. A Ruling was made by the court that the statement spoke for itself, had been introduced in evidence and could not be commented on by Officer Taylor, who merely took the statement. Mr. Taylor continued to disregard the court's order and ruling by continually reading parts of the statement out of context (T.E. 2008-2016).

Contempt 7. Mr. Taylor in examining Mr. Norbert Brown, again referred to a press conference that the court had previously ordered him not to go into. He also waved his arms at the witness in a derogatory manner indicating the witness was not truthful and

showing utter contempt of the court's ruling (T.E. 2030-2032).

Contempt 8. The court directed Mr. Taylor to call his next witness. He called Lt. Garrett, Louisville Police Department. After the witness was sworn and took the stand, a deputy Sheriff advised the court that Mr. Taylor's aide was not searched, as everyone else had been upon entering the courtroom. Mr. Taylor ordered the deputy to search his aide. The court ordered Mr. Taylor to begin his examination, which he refused to do until he was cited for contempt in the court's chamber (T.E. 2068-2069).

Contempt 9. Mr. Taylor repeatedly asked the same question of witness Floyd Miller that the court had held improper. He was also disrespectful in his tone of voice when referring to a certain police officer as "this nice police officer" (T.E. 2169-2172).

At the conclusion of the trial and after the jruy had returned their verdict, Mr. Taylor was brought before the bench and sentenced as follows:

Count 1	—	30 days in jail
Count 2	—	60 days in jail
Count 3	—	90 days in jail
Count 4	—	6 mos. in jail
Count 5	—	6 mos. in jail
Count 6	—	6 mos. in jail
Count 7	—	6 mos. in jail
Count 8	—	1 year in jail
Count 9	—	1 year in jail

This court obviously was mistaken in the number of contempts and has permission of the court of appeals to correct this mistake. Accordingly, Count One, which was changed to a warning, is hereby deleted and held for naught.

The two counts whereby Mr. Taylor was sentenced to one year in jail on each count are hereby reduced to six months in jail on each count as dictated by the Sixth Amendment of the United States Constitution and the case of *Frank* v. *United States*, 395 U. S. 147 (1969). The judgment should read:

Count 1	—	60 days in jail
Count 2	—	90 days in jail
Count 3	—	6 months in jail
Count 4	—	6 months in jail
Count 5	—	6 months in jail
Count 6	—	6 months in jail
Count 7	—	6 months in jail
Count 8	—	6 months in jail

In accordance with the order of the court of appeals, entered February 21, 1972, the Circuit Court Clerk shall certify the above corrections in the record being prepared on appeal and shall certify copies of this corrected judgment to the defendant, Mr. Daniel T. Taylor, III.

Entered this 1st day of March, 1972.

/s/ John P. Hayes
Judge

I hereby certify that a copy of the foregoing was mailed to Mr. Robert A. Sedler, Attorney at Law, University of Kentucky, Lexington, Ky., this 2nd day of March, 1972.

/s/ Art DeWitt, D.C.

PROCEEDINGS UPON IMPOSITION OF PUNISHMENT FOR CONTEMPT
October 29, 1971

Transcript of Proceedings in Commonwealth v. Tinsley, pp. 2288-2291

The Court: Mr. Taylor, the Court has something to take up with you sir, at this time.

Mr. Taylor: Well, I'll be right here, Judge.

The Court: I've for two weeks sit here and listen to you. Now, you're going to listen to me. Stand right here, sir.

For two weeks I've seen you put on the worst display I've ever seen an attorney in my two years of this court and 15 years of practicing law. You've quoted that you couldn't do it any other way. You know our court system is completely based upon, particularly criminal law, the Doctrine of Reasonable Doubt. That's exactly what it means, reason. It doesn't mean that it's based upon deceit; it doesn't mean that it's based upon trickery; it doesn't mean it's based upon planned confusion.

Sometimes I wonder really what your motive is, if you're really interested in the justice of your client, or if you have some ulterior motive, if you're interested in Dan Taylor or Narvel Tinsley.

It's a shame that this court has to do something that the Bar Association of this State should have done a long time ago.

As far as a lawyer is concerned, you're not. I want the jury to hear this; I want the law students of this community to hear this, that you're not the rule, you're the exception to the rule.—

Mr. Taylor: (Interrupting) Thank you.

The Court: I want them to understand that your actions should not be their actions because this is not the way that

a court is conducted. This is not the way an officer of a court should conduct itself.

Mr. Taylor: I would respond to you, sir—

The Court: (Interrupting) You're not responding to me on anything.

Mr. Taylor: (Interrupting) Oh yes, I will.

The Court: Yes, you're not, either.

Mr. Taylor: Yes, I will.

The Court: The sentence is on Count One—

Mr. Taylor: (Interrupting) Unless you intend to gag me—

The Court: (Interposing) I'll do that—

Mr. Taylor: (Interposing) My lawyers will respond to you—

The Court: (Interposing) I'll do that, sir.

Mr. Taylor: My lawyers will respond to you, sir.

The Court: You be quiet, or you'll—there will be some more contempts—

Mr. Taylor: (Interrupting) No, you heard what I said.

The Court: I have you nine counts. First Count, 30 days in jail; Second Count, 60 days in jail; Third Count, 90 days in jail; Fourth Count, six months in jail; Fifth Count, six months in jail; Sixth Count, six months in jail; Seventh Count, six months in jail; Eighth Count, one year in jail; Ninth Count, one year in jail, all to run consecutive.

Take him away.

Mr. Taylor: We will answer you in court.

The Court: I'd be glad to see you.

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS IN *COMMONWEALTH v. TINSLEY*, October 18, 1971 Through October 29, 1971

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The Court: The Court's making a ruling at this time that it is recessed from 12 until 1:30. By 1:30 I want written questions from each attorney. The Court is taking over the voire dire. I will ask the questions. I am also holding Mr. Taylor in contempt of Court for his actions this morning, not only in—I repeatedly had to tell him you've asked that question, you've asked that question. He goes over the same question, he pays no attention whatsoever to the Court's ruling, and also I noticed this morning—I want this in the record—that two newspaper reporters were seated on the front row. I had no problem with Mr. Taylor yesterday when these people weren't there.

I'll make my decision on what the punishment is going to be at the end of this case.

Mr. McCall: Judge, insofar as William Michael Tinsley is concerned, we object to the Court's ruling and would ask the Court to allow us leave to ask questions individually on behalf of that defendant.

The Court: I'm going to ask the questions.

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Mr. Taylor: Your Honor, may I respond to the record, please?

The Court: Yes, sir.

Mr. Taylor: Thank you. I would like at this time, in regard to the first ruling of the Court, to state that this is a capital case and I suppose one of the most heinous that's ever been around here and so forth where we have had to labor under every disadvantage. Your Honor has issued a rule and then the magazine came out anyway. You know, I've been over that and over that. The brokerage house—

The Court: (Interrupting) I've heard that, Dan, a hundred times. I realize what you're trying to do. You've got a job to do, but on the other hand, it's my opinion—I think you're putting on a show. That's my opinion—

Mr. Taylor: (interposing) I'm sorry you think that, Your Honor.

The Court: —from your actions, what you do in Court.

Mr. Taylor: Let me say this to Your Honor. Even at the present time there are other commitments, without going into them, that I really wish I could be working on, you see. That's my problem.

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Indeed, I'm going to ask you if you won't call the Fayette Circuit Judge and help me in regard to a matter of next week. I think we will be here next week, possibly.

Now, a proper voire dire is vital and it's not always pleasant because it's been my experience people who are up there being talked to are inclined to possibly—what shall I say, hide behind certain generalities of accepted conduct. What I'm saying, Your Honor, they're not always perfect. It's a human tendency.

The Court: The Court recognizes that. I have never seen a completely fair and impartial human being.

Mr. Taylor: Nor have I. By asking us to submit our voire dire questions in writing, in the first place, in the first place, it's tremendously—even, let's say arguendo that the Court's position should be correct in this matter—it works a tremendous prejudice against the other lawyers in the case.

The Court: I realize that. I don't think you do.

Mr. Taylor: Well, I certainly do, but I don't think my voire dire was improper or I wouldn't be going through it. If you think I enjoy

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going to that hell hole in that jail over there—

The Court: (interrupting) I didn't say I was going to put you in jail.

Mr. Taylor: Well, if you think we've got any money, I haven't. I don't mean that arrogantly, I'm just talking about—I have got enough problems without seeking further ones. However, nobody is begging or weeping on that point. We'll just have to take what comes. The problem is this kind of thing, I think, dissuade younger men from coming into practice and so forth. They get to thinking that in order to—

The Court: (interrupting) It seems to me very obvious that if you want to know if this particular person has prejudged a case and already formed an opinion, that's a very simple question to ask, instead of going through, "Have you seen the fence?" It's got nothing at all to do with this case.

Mr. Taylor: Your Honor, please, I—

The Court: (interrupting) I think that's the mistake I made when I started out by saying that I was going to let you have a completely open voire dire. That's the last time I'll ever do that.

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Mr. Taylor: Can we talk—do you mean with me?

The Court: With everybody.

Mr. Taylor: Including me?

The Court: Including you and everybody and the Commonwealth, too.

Mr. Taylor: Judge Hayes, will you recognize then, sir, please by 1:30 just mechanically we couldn't have the questions to you and you say, "Well, if you don't—

The Court: You have an hour and a half.

Mr. Taylor: Well, may I ask you, please, to reconsider the ruling and let us conduct the voire dire? I would make—may I request to be off the record, please?

(Whereupon, an off-the-record discussion was had.)

Mr. Taylor: May I say, respectfully, to Your Honor, as you have indicated that you intend to hold myself in contempt of Court, certainly, there hasn't been any intention on my part in anyway to do other than defend my client under our canons of ethics

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and proper law and so forth, now, Your Honor, please, the Court having just told me that you have got me in contempt of Court constitutes such a psychological blow as to impair in great portion, in great manner, my ability to continue with the adequate defense of this young man here accused.

Now, I say that for the following reasons, Your Honor, heretofore in experiences like this I have found, I have learned just exactly what is entailed in defending one in a situation like that, plus the other commitments that I have in the office beyond this case, in which we are serving without pay, which requires that I have reasonable anticipation, if possible, of how I'm going to spend my time in the next few days. This involves particularly the case pending for trial in Lexington, Kentucky.

I am going to have to, in the circumstances, ask Your Honor and move Your Honor to move for a mistrial as to Narvel Tinsley and to reassign for trial, if Your Honor— I think we would probably want to do some research and I've found the Court fair in the past from the standpoint of giving counsel an opportunity to present whatever legal position he has in this situation, or any other situation— Your Honor, I think, would understand, as I read the case law, that if

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I am held in contempt mid-trial, I say this respectfully under due process I would want to know particularly what for. Your Honor has mentioned what you feel your reasons are, but this being the case, here we are without a jury

even in, the worst case I've never defended, working for nothing, qualifying the jury, going into the second day of trial with an extra panel in, all sorts of conflict set theoretically from the antagonistic defenses here, and so forth, the responses of the jurors that have gone on this morning and I suggest respectfully to Your Honor it offends due process for me to have to continue this case under those circumstances if, indeed, Your Honor is set and—pardon me, please—determined on the proposition that Your Honor's going to hold and punish me for contempt, well, I can only ask the Court to, No. 1, declare a mistrial as to Narvel and remand him back to custody and reset him for trial. I think the cases support me in this and I stated to you my reasons. It's hard enough under the circumstances to defend the case and it goes beyond, I think, the capability of any ordinary, or maybe more than ordinary, person to continue to work under those circumstances. It constitutes—I mean this respectfully and not personally, but from my standpoint, subjectively a harassment, intimidation, threat and danger and fear as to cause me to not be

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capable of continuing to put my whole mind on the problem before me, which is the adequate defense of my client here charged with murder.

Your Honor has mentioned the newspaper guys. I don't have control over where they sit and so forth. I say further to you, Your Honor—of course, you're the one making the judgment, as far as that goes. I don't know of any intention to make today any different from yesterday. I am offering, since we have offended the Court, if you will reconsider your holding to take the voire dire away from us that I will defer to my brothers, Scott, Fleming and McCall, because we have been able to communicate with each other. Wouldn't that be an option that we might consider, Judge Hayes?

The Court: Well, I can't—

Mr. Taylor: (interrupting) And let them continue with the verbal voire dire?

The Court: What do you all say about it? I don't think, legally, I have to—if I take it over I have to give them the chance to at least offer some questions. I just can't completely take it away from Mr. Taylor and his client, with no opportunity—

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Mr. Schroering: (interrupting) Judge, I think it would be more orderly if the Court would continue with what it has already suggested and that is take over the examination of the jury upon questions submitted by counsel. I feel that under those circumstances it might very well be interpreted the Court would be denying Mr. Taylor if you do it any other way.

Mr. Fleming: He can waive in our favor. Judge, this is incredible, absolutely incredible that we sit here like bumps on a log and because you are displeased with the way Mr. Taylor has conducted himself—and I'm not expressing my views one way or the other on that, I have no status—by the same token, I don't think that the Court should place us in a position of being denied the opportunity to perform at least up to the point where you say you're doing it just like Taylor, so now you're out.

The Court: I agree with you there, Mr. Fleming.

Mr. Fleming: Judge, this is a capital case. We've got a kid that is charged with shooting a policeman. We know from the evidence that that is an irrefutable fact. He shot that policeman and to just sit there and throw a bunch of written questions at a bunch of people, we might as well try the case on a

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computer.

Mr. Taylor: Why don't you do this, if Your Honor

please, if you want me to submit you some written questions and not hurt the others, isn't that fair? You know, they haven't even—respectfully said—done anything.

The Court: I realize that and that's the only reason I hate to do it. It's none of their fault, really.

Mr. Fleming: If he is willing to waive, I don't see what possible error there could be.

The Court: Well, if he will put that in the record.

Mr. Taylor: What are you going to do about holding me in contempt and making me continue with the trial?

The Court: Well, are you telling the Court that you are not going to continue the trial?

Mr. Taylor: Now, wait a minute, please. I'm not stating in any way that I am not following, that it's my intention to not follow any order of this Court. I live under the law and that's always been what I meant to do and that's my future intention. I—

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The Court: (interrupting) In other words, if I say your motion is overruled and that the trial will continue, you will continue?

Mr. Taylor: Well, I'm certainly going to follow the Court's order, yes, sir. I am not in anyway stating to Your Honor that anybody is planning on anything illegal or silly or unfair or overly dramatic or walking out. That's absurd, at least, from the way I see what my responsibility is. I would have to continue on under what I consider to be an almost insupportable burden, that is psychologically. You might not think this bothers me, but let me assure you otherwise. It's, I think, one of the most—and this is not meant personally—unfair situations a lawyer finds himself in when contempt starts coming down. People write articles about him and everything else, and I'm sure Your Honor—

The Court: (interrupting) This is not my fault.

Mr. Taylor: Well, you know, I don't even know, seriously, what the this is that's bothering Your Honor, but Your Honor is running this Court, not me.

The Court: That's right.

Mr. Taylor: Yes, sir. I've conceded that all along, of course.

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The Court: Maybe you all had better discuss the case. You want to discuss with Mr. Taylor out in the hallway, or something?

Mr. Taylor: If we might, I mean, yes, sir.

The Court: Let the Commonwealth, too, if you wish.

(Whereupon, a conference was had between all defense counsel, out of hearing of the reporter.)

Mr. Fleming: I just want to get this motion in the record at this time. The defendant, William Michael Tinsley, again renews his motion for a severance on the ground that there appears to be some sort of conflict between counsel for the co-defendant and the Court and that as the result of this difficulty, William Michael Tinsley's defense is prejudiced.

The Court: Overruled.

I'm going to reconsider my order holding Mr. Taylor in contempt and change it to just a warning at this time. I think still that I'm going to require he and the Commonwealth to submit their questions in writing.

CONTEMPT CITATION RESCINDED

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Mr. Taylor: Yes, sir. Can I just ask Charlie something?

The Court: (Nodding head affirmatively.)

(Conference between Mr. Taylor and Mr. Scott, out of hearing of the reporter.)

Mr. Scott: Judge, now are all parties to submit questions?

The Court: No, you are not.

Mr. Scott: Is Mr. Taylor going to be allowed to read his questions to the jury, or is the Court going to do it?

The Court: I'll have to look at them first.

Mr. Taylor: Do you think there might be some possibility of that?

The Court: There might be a possibility. You give me the questions and if they are proper, I'll let you ask them.

Mr. Taylor: All right, and I'll ask the panel as a whole.

The Court: Now, the questions I say are improper I don't want you to go ahead and ask them after I've already told you—

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Mr. Taylor: (interrupting) Judge Hayes, I'll make you a carbon and we'll read them by rote together. Now, would it be possible—and if it isn't, we'll figure some way to do it otherwise—for us to waive, and I'll get my client to put on record, my being in the courtroom until 2:00 o'clock so I can fix it for you?

The Court: We'll just wait until 2 before we start.

Mr. Taylor: All right. Let the record show that I understand what the Court has just said and consider myself under the jurisdiction of the Court.

Mr. Scott: Judge, I have one thing to cover for the purpose of the record. The defendant, William Michael Tinsley—

The Court: (interrupting) You're excused.

Mr. Taylor: Thank you.

Mr. Scott: The defendant, William Michael Tinsley, joins with Mr. Taylor in his objection to the Court refusing challenge for cause or strike for cause, of Mr. Bennett, the panelist, on the ground that he clearly indicated that he was prejudicial in favor of police testimony and for the reasons that Mr. Taylor

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previously indicated.

The Court: I truthfully don't think that's grounds. I might be wrong, I don't know. It's a very close question.

Mr. Fleming: In that regard, I would say I had difficulty hearing the man, as I have had everybody, but I think that at one time he said he was inclined to believe the Commonwealth's case and indicated that he was more inclined to believe their case and I think that statement would disqualify him.

The Court: I think that you guys should go into him further, quite frankly.

Mr. Fleming: We'll have an opportunity to do that.

The Court: There's nobody knows what has happened in this case in this Chambers, except us, right? (All counsel nodding heads affirmatively.) So, if the newspapers get hold of this—I'm telling everybody not to discuss this with the newspapers.

(End of proceedings in Chambers.)

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(Conference at Bench, out of hearing of jury.)

Mr. Ousley: You're letting him go all over the place, again.

The Court: I'm going to make him stick to it—

Mr. Schroering: (interrupting) May it please the Court,—

The Court: (interrupting) He didn't get an answer. He's got a right, until he gets an answer—

Mr. Schroering: (interrupting) Counsel for the defendant is not following the questions which he submitted to the Court and the Commonwealth, therefore, objects to the manner in which he's conducting the voire dire, in view of the previous rulings of the Court.

(End of proceedings at Bench.)

The Court: Ladies and gentlemen of the jury, I'm going to send you to your jury room for a short recess, with the same admonition. Don't discuss the case or form any opinion. Don't even talk about it.

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IN CHAMBERS

The Court: What do you want to put in the record? I'm going to tell him he is going to read the questions and not vary one bit, but don't you all, you know, the last time, before he got an answer, somebody over there—you all were talking, and I can't blame the guy too much for that, but on the other hand, he is getting away from the questions and knowing him, if you give him an inch, he'll take a mile. I might as well sit on him now.

Mr. Schroering: Outside, Judge, at the Bench, I objected to the manner in which he was asking the questions and the questions that he asked for the simple reason that heretofore the Court had ordered both the Commonwealth and Mr. Taylor to submit questions on voire dire which is in the record, and admittedly, from time to time, additional questions might vary from those presented to the Court, but I believe Mr. Taylor has, this morning, consistently asked questions that were

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not approved previously by the Court on submitted questions on voire dire. I believe this is deliberate and continual on his part. This is the reason why the Commonwealth has objected to the questions which he has just asked on voire dire.

Mr. McCall: Judge, I would like for the record to reflect that the Court made some remark, "You all badgered the jury yesterday all day," and I want the Court to know—

The Court: (interrupting) Well, I—

Mr. McCall: (interrupting) I want the Court to know that neither myself, nor Mr. Fleming—

The Court: (interrupting) I wasn't addressing that to you all, it was strictly Mr. Taylor. But, I'm not going to permit that either, on either side.

Mr. McCall: I think he's across the hall. I can go find him.

The Court: I don't care if he gets in here, or not. There's no reason why he can't read his questions and get an answer.

I would appreciate it if everybody would just sit down and not get up and be running around all the time.

Mr. McCall: Judge, you just can't hear.

Mr. Fleming: I can't hear. Where

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Carl's sitting and Ed and Danny's sitting you can hear them.

The Court: I know, but you guys are seated right beside him and you still can't hear?

Mr. Fleming: Oh, there I can.

The Court: I don't object to you sitting there, at all. The only thing I'm saying, everytime that some of you want to make an objection, you feel like you want to go to the Bench. All you have to do is say I object. If it's something that requires a hearing, we'll have it. For instance, everytime somebody says yes, I'm opposed well, it's like the troops coming in and everybody gets up. We'll get it all in the record and note an objection to protect it for you that in every instance in this matter, you're got an objection.

(Whereupon, the Judge sent for Mr. Taylor.)

The Court: O.K. Put this in the record, since Mr. Taylor's here—

Mr. Taylor: (interrupting) Your

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Honor, I'd have been here before, if I had known you wanted me.

The Court: You were on No. 5. Now, Mr. Taylor, I'm going to tell you that you have to read your questions—

Mr. Taylor: (interposing) Yes, sir.

The Court: —verbatim, and no other comments, whatsoever. Also, I have told them I don't want them interrupting you.

Mr. Taylor: Thank you. Now, may I do this, just to protect the record, please? May I just enter an objection to voire dire being limited and, that motion having been made, may I respectfully call the Court's attention to the fact that Mr. Schroering submitted a list also. I'm not making any stickler for him being within his list. I'm just kind of talking about the equities.

The Court: Well, he's going to stick to his, too.

Mr. Taylor: Thank you, Your Honor. Stick within the list, yes, sir. Thank you.

The Court: Does everybody understand everybody?

Mr. Taylor: May we be off the record?

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IN CHAMBERS

The Court: Gentlemen, we are back in Chambers again, let the record show. Once more, as the result of Mr. Taylor's completely ignoring the Court's rulings. This time it is not a warning. It's contempt of Court and the Court so finds.

I have repeatedly ordered him not to get into this escape. It has nothing to do with this case. I've repeatedly ordered him to stick to the—on cross-examination —basically what's been brought out on direct. He completely ignores that. And the antics he's going through in Court is another reason I'm holding him in contempt. I can't warn you anymore, Dan. What I say to you goes—just like pouring water off of a duck. I don't think it soaks through.

Mr. Taylor: Let me respond to the record, if you so desire, please?

The Court: Go right ahead.

Mr. Taylor: Is that now, Your Honor?

The Court: Yes.

Mr. Taylor: Now, Your Honor takes

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the position that you have warned counsel to stay away from the escape features. I sincerely—I don't say that I've caught every word that's been said. That was one of the submitted questions on voire dire. I've forgotten the number, but it's fairly early in the sequence of them. Now, I took it from that to mean that the Court considered that inquiry in that area could be made.

Now, let me tell you my reasoning. I'm asking them on voire dire—

The Court: (interrupting) You asked them if the fact that they had or they had read something—

Mr. Taylor: (interrupting) No, no—with all respect to the Court, I can tell you almost verbatim, sir, Your Honor.

The Court: I've got it here, too.

Mr. Taylor: All right, would you please, refresh yourself, please?

The Court: It was basically that he shouldn't be tried for that on this case, which I had no objection to and which is proper, but you can't go into the fact when you arrested him and had the carbine on him, was he loaded.

[1082]

That's got absolutely nothing to do with this case.

Mr. Taylor: Let me tell you, if you please, Your Honor, may I show you what the theory of defense is in that regard. We're out of the hearing of the jury. Fair enough? I mean, may I attempt to do that, pelase?

The Court: (Nodding head affirmatively.)

Mr. Taylor: Your Honor, Judge, here is—the main aspect of this case has to do—this is no tale out of school—it has to do with the Schaefer slaying. I think it is—well, I don't want to damage Messrs. Fleming, Scott or McCall in any way, so, let me state it this way. I think the Commonwealth has a clear, strong defined theory—I'm not averring that it's going to succeed or anything, in regard to the slaying of Officer Hayes and, I believe, from the opening statement and what has come out so far and my familiarity with the case, Your Honor, that is going to be, more or less, the problem of the person defending William Michael Tinsley, and not Narvel.

Therefore, Your Honor, the case boils down to what you will see as the case goes on, to a non-witnessed slaying of Officer Schaefer. Now, obviously,

[1083]

and I don't mean this is any gruesome or disrespectful way, but only to make the point I'm trying to reach here, Your Honor, obviously Officer Schaefer did not, pardon me for putting it so bluntly, slay himself, nor do I consider it within the realm of possibility, Your Honor, that the other officer did anything to Officer Schaefer.

Therefore, what we're going to get down to here is the reaction and you might say, it's an overused word in the law, but the proclivity of Narvel Tinsley, and I'm suggesting to you that I'm not trying to gain some psychological point over this witness. He's a hard-working police officer. I'm saying to you that it's germane to my theory of defense that Narvel was unarmed when he was captured after he escaped.

Now, does Your Honor feel that that is too far fetched?

The Court: Well, truthfully, I think it is when you've got testimony under oath—of course, you weren't in the case over in Juvenile Court.

Mr. Taylor: What are you saying?

The Court: I don't know if I'm spilling the beans here or not, but the testimony under oath that's part of the record with

[1084]

somebody's motion that he was, the night of the—the night of the—

Mr. Taylor: (interrupting) That he was what, please?

The Court: Armed. That's the important thing.

Mr. Taylor: I know that, Judge.

The Court: Not three, six months later when they found him someplace, he wasn't armed. I don't think—

Mr. Taylor: (interrupting) Judge, he was armed and he placed his pistol under a rock?

The Court: Right.

Mr. Taylor: Right.

The Court: What's the fact—when was he arrested the second time?

Mr. Taylor: The second time, on the 5th of October.

The Court: From the 5th of May, what's four or five months got to do with it.

Mr. Taylor: I'm talking about if this was a man who habitually went around armed, I'm talking about—don't you see that?

The Court: I truthfully don't. Not

[1085]

after—the whole escape thing, as far as I'm concerned, has nothing whatsoever to do with this trial.

Mr. Taylor: O.K., but don't you—

The Court: (interrupting) And, as I stated in the record, it's—Dan, it's not only that. You just can't follow the orders of the Court.

Mr. Taylor: Judge, Mr.—Captain Hogan is the one, Your Honor, who said that—what he's trying—look, Judge Hayes, he's trying to establish probable cause. Now, if Your Honor please, one of our motions in formal form, sir,

and pursuant to your deadlines, Your Honor, was that probable cause did not even exist, sir.

The Court: Which was overruled by the Court.

Mr. Taylor: Yes, Your Honor, but would you agree that I have a duty—I don't want to harp on it or anything like that, but as the case goes on I've got to show—we have to make objections.

The Court: Sure.

Mr. Taylor: As a matter of fact, Your Honor, pardon me, did I cut you off?

The Court: No.

[1086]

Mr. Taylor: As a matter of fact, that motion was coupled further with a fourth motion, wasn't it, or they get pretty well mixed up, in regard there was an actual serious motion made by all counsel, to suppress the introduction into evidence of the two 38 caliber pistols, to wit, the Charter Arms and the Rossi.

The Court: And before Hogan ever got on the stand I told the Court Reporter, I said put an objection to this man's complete testimony in the record for both defendants. That same motion I moved on previously is overruled again this time. Didn't you ask me to do that?

Mr. Taylor: Yes.

Mr. Fleming: (Nodding head affirmatively.)

Mr. McCall: Yes.

Mr. Taylor: Yeah, but still the case goes on. Now, here's what I want to say to you, Judge. You haven't, I suppose you wouldn't have any reason to, really, seen David Keith White's statement yourself, have you?

The Court: (Shaking head negatively.)

Mr. Taylor: Now, Your Honor agrees with us as a general proposition that Mr. Schroering can't put my file in evidence, you know, you ruled on that.

[1087]

The Court: I realize that.

Mr. Taylor: Would you understand what I'm driving at if—we're in camera here, or, at least, in Chambers. If you saw that David Keith White's statement does not at all say that Narvel shot anybody. Do you see then that—

Mr. Schroering: (interrupting) Man, what's that got to do with it.

The Court: I understand that it doesn't.

Mr. Schroering: Judge, he's—

Mr. Taylor: (interrupting) I sat right there and heard Captain Hogan say, sir, that he had gotten information from David Keith White that he shot—

The Court: (interrupting) From Siegfred Taylor and from somebody Miller—

Mr. Taylor: (interrupting) No, Judge, Your Honor, Captain Hogan said on the stand there that he had been told by David Keith White that William Michael Tinsley shot an officer and that Narvel Tinsley shot an officer. I heard him.

Mr. Schroering: Judge, that's not the testimony.

[1088]

Mr. Fleming: Judge, I'd like to interpose an objection here to the introduction of the statement of David Keith White at this point. Now, remember—somehow we get to the point William Michael isn't even in this case. He is in this case. As to William Michael Tinsley, this is hearsay testimony that you're putting into the jury.

The Court: That's what I—I mean, I assume all of you are lawyers, I assume all of you know this.

Mr. Fleming: On the question of probable cause, come in here and bring him in here and question him all you want to about probable cause and bring in all the hearsay you want to, but as far as William Michael Tinsley is concerned, if this statement goes in now, it's rank hearsay.

The Court: That's right.

Mr. Fleming: It's not David Keith White—

Mr. Taylor: (interposing) I'm not introducing it.

The Court: And you cannot—

Mr. Fleming: (interrupting) You're reading parts of it.

[1089]

The Court: You cannot take parts of it out and say Judge, your copy of David White's statement say that he shot anybody, or, you know—

Mr. Taylor: Your Honor, excuse me, were you finished?

The Court: It's not only that, but it's—well, the record will bear me out. I'm not going to say anything else.

Mr. Taylor: I'm going to say this, if I might, please.

The Court: You can say whatever you want to say.

Mr. Taylor: Thank you, Your Honor, thank you. Now, I am trying to stay within the confines of cross-examination. The officer, as I heard him testify, said, as I was—Virginia can find it in her notes. You all are toying—I don't mean this facetiously or disrespectfully, but—

The Court: Can you go back that far, Virginia?

Mr. Taylor: If you will, and I'll eat the machine—

[1090]

(Whereupon, an off-the-record discussion was had.)

Mr. Schroering: May I say this. In the statement White states in that statement that Narvel Tinsley, with a gun in his hand, chased Officer—the officer around the side of the car—

Mr. Taylor: (interrupting) Totally untrue.

Mr. Schroering: The only thing he doesn't say is he actualy saw him shoot the gun.

Mr. Taylor: That's totally untrue.

Mr. McCall: Judge, let's don't get all of this in the record, Judge. It's got nothing to do—

Mr. Taylor: (interrupting) I waive being on the record.

(Whereupon, an off-the-record discussion was had.)

Mr. Taylor: I'm saying—let me just finish, and then I'll shut up.

The Court: All right, go ahead.

Mr. Taylor: What I am—it's an extremely important—David Keith White is the pivotal witness in this case. Now, for the Lieutenant, sir, Your

[1091]

Honor, please, to get in the minds of the jury right now, which he did do, that White had given him such information when I know, Your Honor, I'm going to be able to, I think, hand David White his head in his hand—that's a figure of speech only—if he tries to maintain that position in view of that statement. I feel, not only inclined to cross on the subject, I feel it's my duty to defend my client, to point that out now. Now, you may feel otherwise. Another thing, Your Honor, that worries me, please, you say, "Mr. Taylor, I've repeatedly told you to not get into these cases." Honestly to goodness, I don't remember—now, I'm not talking I want to eat the machine stand on that. If it's in the record, or Your Honor has a clear recollection that you told me to stay away from this—the only point I'm trying to show is the boy was not armed then, you see? Now, Judge, we have to go against the F.B.I., the community, everything, and so forth and we are trying to stay within the law. I am sure that this is an honest mistake. I'm just about through with the witness. I cannot financially, and, I hate to use that word in connection with the practice and if it wasn't absolutely necessary, but I've got to use it, afford a second trial in this case if it can be avoided, consonant with my doing my duty. We've worked hard, we've got 14 people, one of which is sleeping through most of the trial, and

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possibly some inquiry might be made in that regard.

Mr. Schroering: May it please the Court, I have another witness who has to leave at 7'00. Could we interrupt the cross-examination here—

The Court: (interposing) He says he's about through.

Mr. Schroering: —and let this other witness get on.

Mr. Taylor: Look, I'd be glad to work out anything.

Mr. Schroering: May it please the Court, this is a deliberate effort on behalf of Mr. Taylor in his marathon of irrelevant questioning of these witnesses, to try to delay this trial so that this witness will not testify. Now, I've been through this before. I've been through it in the Geary case—

Mr. Taylor: (interupting) Judge, I said to Mr. Schroering at the noon break that I would do—and you all heard me say, some of you—I would do anything to convenience his officer, that we weren't going to have this kind of argument and for him to sit there now and—it's going on 4:00, and state otherwise, I don't believe he's accurate. If he's got another witness, if it's your ballistics man, I don't want to—he told me then, that is, Mr. Schroering, that he would put him

[1093]

on Monday morning and I, however, was not made privy to what was apparently a change of plan and I came bouncing over after the lunch break and said, "Where is the—

The Court: (interrupting) In any case, are you about finished with this man?

Mr. Taylor: Just about, or if you will reconsider, I'll—

The Court: (interrupting) I'm not going to reconsider anything. How many questions have you all got of the man?

Mr. Fleming: I want to make an objection when you get around to trying this case again.

The Court: That's what we're here for.

Mr. Fleming: I object to his making any inquiry into

probable cause which brings about bringing in hearsay statements—

The Court: (interposing) Right in front of the jury.

Mr. Fleming: —If you want to question probable cause and you want to use hearsay to establish it, back here is the place to do it, not out there. What he's trying to do, and I agree with him, that David White's testimony is the pivotal point on the whodunit phase of the case.

[1094]

The Court: Right.

Mr. Fleming: He's trying to put in the impeachment before the witness ever takes the stand.

The Court: That's right.

Mr. Taylor: Judge, you've got a witness here—excuse me.

Mr. McCall: Let me make a second motion, Judge. We've been getting kind of short-changed—

The Court: (interposing) I know you have.

Mr. McCall: We're all in a hurry and we'll let you get this witness off and put the F.B.I. agent on. We, at this time, renew our motion that we made yesterday, on the same basis that we argued in Chambers, and I want to add that a lot of things that are going on in the courtroom today are not getting into the record, through no fault of Mrs. Klapheke's, but there are side comments between Mr. Taylor and Mr. Schroering and the jury can see them, the people out in the audience can see them and they are depriving our defendant of a fair trial, and she can't possibly hear what's going on, but I'm close enough to see the faces being made and the statements being made and they are denying our client the right to a fair trial. We're renewing out—

[1095]

The Court: (interrupting) as far as that's concerned, the Commonwealth is also under the same rules. I don't want to hear anymore from your side either, unless they

want to make a specific objection and I don't want the objection argued by the Commonwealth or the defense attorneys in front of the jury. If you have an objection to make, hold up your hand or say you've got an objection. If you want to argue about it, approach the Bench.

Mr. Schroering: Does Your Honor want the reason for the objection?

The Court: Not in front of the jury.

Mr. Fleming: My motion is to set aside the swearing of the jury and grant a severance insofar as William Michael Tinsley is concerned and to dismiss the panel.

The Court: You have something else?

Mr. Taylor: Yes, sir.

The Court: Overruled.

Do you have something else?

Mr. Taylor: Your Honor, I want to move you to sever the cases and reset either one, however you want to do it and so forth. I would like to not be

[1096]

the whipping boy in this whole proceeding, and so forth. I think I have explained to you what the basis of my cross of Captain Hogan was and it had to do with he misstated what the Keith White information he received really was. Now, this happens, Judge Hayes, to be the pivotal point in the entire case.

The Court: Not yet.

Mr. Taylor: Your Honor, if it please, in my contemplation of how to defend the case, this is the fulcrum that it turns on. May I say to you most respectfully, we spent six weeks trying to prepare for this case, and this includes anticipating what the Commonwealth is going to put on. Now—

The Court: (interrupting) But there are rules of evidence and I assume all attorneys know those rules, that you've got to follow certain procedure. When testimony is hearsay, it's not admissible, we all know that.

Mr. Taylor: Certainly, Your Honor. May I know this from you? A murder case is being tried, a police officer says, "John James said defendant Doe did it." I have defendant Doe's statement that say contrary-wise. Won't you concede that on cross I would ask him if, indeed, the statement doesn't say otherwise?

[1097]

The Court: No, let's get on with it.

Mr. Taylor: What about this business about the escape, and so forth?

The Court: I don't even want that mentioned.

Mr. Fleming: Judge, I understand that anymore inquiries in an effort to establish probable cause is not going to be made in front of the jury?

The Court: That's right. I mean, that's my ruling, whether it's going to be followed or not, I don't know, but that's the ruling.

Mr. Taylor: Well, can we get this straightened out? What is your situation in regard to your witness? I want to cooperate if you've got a man—

The Court: (interrupting) I take him—if you all are not finished, I'll take him off and put the other guy on, and then you can put him back.

Mr. Taylor: May I reserve any response to your ruling in reference to contempt and so forth, and may I again assure the Court that I have not fully understood from the Court to stay away from the escape thing. The Court's made it plain now to stay away from the escape.

[1098]

The Court: (Nodding head affirmatively.)

Mr. Taylor: Will the Court permit—O.K. Just stay away from the escape?

The Court: (Nodding head affirmatively.)

Mr. Taylor: The Court wants, furthermore, to stay away from probable cause, right, sir?

The Court: In front of the jury, right. If you've got something—I've been through it once and I've overruled it. If you've got something else that comes up, ask if we can take it up in Chambers.

Mr. Taylor: Yes, sir. May I ask you this question, Your Honor? Would Your Honor see that sometime the assertion of a witness, so-called witness, going into probable cause and going to further the Commonwealth's case, that there is an overlap there?

The Court: Could be, could be.

Mr. Taylor: All right, now, Judge Hayes, may I reserve any reactions to your other positions that occurred back here in Chambers?

The Court: All right.

Mr. Taylor: Thank you, Your Honor. Now, we're going to take him off and put—

The Court: (interrupting) We're

[1099]

going to take him off and put the F.B.I. agent on.

Mr. Schroering: Yes, Judge.

(End of proceedings in Chambers.)

* * * * * * *

[1354]

The Court: Do you want to play the record?

Mr. Taylor: Could we have total silence?

The Court: All right.

Mr. Taylor: May the record show that what we are offering to play now has been offered by the Commonwealth of Kentucky—may I continue, Your Honor—as being an exact tape transmission interview of the witness, David Keith White, in City Police Headquarters, before Officer Kenneth Newcomb at the time and prior to when his written statement was prepared and he signed it. The Commonwealth alleges—

Mr. Schroering: (interrupting) Objection, Your Honor. (No ruling.)

Mr. Taylor: The voices you will hear at the Commonwealth's own giving to us of the tape, are those of David Keith White and Detective Kenneth Newcomb.

The Court: All right.

(Whereupon, the cassette statement of David Keith White, Commonwealth Exhibit No. 38, was played for the Jury. During this time both Mr. Taylor and Mr. Fleming were writing on the blackboard.)

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The Court: First of all, Mr. Sheriff, please remove the blackboard from the courtroom.

Mr. Taylor: May I object?

The Court: You may proceed.

Mr. Taylor: May I object?

The Court: Note your objection, overruled. If you're going to argue the case, the time to do it is after the closing of the testimony.

Mr. Taylor: I'll certainly keep that in mind, Your Honor.

The Court: Mr. Taylor?

Mr. Taylor: Yes, Your Honor?

The Court: Let's go in Chambers.

Mr. McCall: Renew our Objection No. 1.

The Court: Overruled.

IN CHAMBERS

The Court: Court is now in Chambers, present are all the attorneys, Detective Boyer, Mr. Taylor and his two witnesses.

Mr. Taylor: May the record show that

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I requested the aforesaid two witnesses be with me earlier in the day when the Court overruled the motion for recess, based on the fact that the Court had previously said we

would recess at noon today. The Court at that time didn't permit said two parties to be with me. It is now approximately a quarter to four o'clock, us having resumed, appeared back for the trial, as ordered by the Court, in spite of the foregoing circumstances, which appear in the record.

The Court: The Court at this time is holding Mr. Taylor in contempt for the second time during this trial for smarting off to the Court in Open Court. That's all I've got to say.

Mr. Taylor: May the record—may I speak to the record, Your Honor?

The Court: Go ahead.

Mr. Taylor: May I say that this last incident, as I view it, apparently, just as through this whole trial, provoked some anger in the Court, apparently, because it is now very, very obvious that the Commonwealth's lodgepole witness, towit, David Keith White, is talking a tissue of lies, that it is clear to everyone, the Commonwealth cannot possibly, unless they have further than David Keith White, get any conviction against my client, Narvel Tinsley, for either of these crimes. I

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would suggest most respectfully, we are all capable of error, that this has apparently enraged everyone other than myself, or at least a goodly number of people, I believe the record—are we making a voice transmission here, also—yes, I'll stand on the voice transmission going on right now that I believe that I am at myself and being moderate and controlled and civil. It was my understanding from the Court, indeed, I respectfully moved the Court to bring the blackboard out that we just used and, indeed, myself and Judge Fleming both marked on it. The Court, I have respectfully requested the Court before, out of the hearing of the jury, if the Court would so consider to please do so to stop making waving gestures with the Court's right hand

in an effort to move me about the room as though I were a sheep, or something, which I am not a sheep. I cannot very well, under the circumstances, an intensive trial, the sixth day and into hours and hours beyond this case that the Court set it for, help perhaps but react somewhat if the Court should abuse me from the Bench.

Now, the Court has contempt power. The Court, however, I would respectfully suggest, is under the law, as we all are, and the Court, it seems to me just now—I'm looking for a clearer way to put it, because I'm so exhausted, but pulled the rug out from

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under me by permitting me on the one hand to bring a blackboard in and then, apparently evincing some rancor that we had, this is an opinion only, scored so many favorable points for my defendant by further exposing the falsehoods that Keith White is capable of and that are traceable to him. The Court then is, I suggest to Your Honor, working a detriment on the rights of my client, Judge, Narvel, by continuing to degrade me as a human being. The record—I say may the record again show that my only purpose at all in this matter is to try to defend this client. This is not the first murder case that I have ever had and I doubt that it shall be the last. I am not being paid for this, I am volunteering my services, after having been asked by the defendant on trial to do so. The Court, I would suggest, is taking unfair advantage of a lawyer when the Court itself is snide to the lawyer, because the Court has—there have been articles written on it, books written—the Court has power to punish at its discretion and perhaps, at least, has immediate power to punish at its whim or caprice. I say that, not personally, Your Honor, I'm trying to state the abstract proposition.

The Court: There is nothing personal about this whole thing, as far as the Court is concerned.

[1359]

Mr. Taylor: Well, Judge, I suggest most respectfully that that certainly was a cut at counsel when you said out there, as though I had done something wrong, the inference was, "Mr. Taylor, argue your case when the time comes." Well, your having instructed me to do so, I was telling the Court I would so so. Whereupon, I just wonder how much psychological pressure it is possible (a) for me to be put under, (b) for me to bear, (c) for my colleagues at the bar to stand and remain mute while it's happening.

Now, this isn't happening to me, per se, as an individual. We're in a Court of law on a case that can't get anymore serious. It's gotten on a plane that I don't want it to be on and I would honestly try again and even harder, but it's awfully hard to try when you can hardly hold your head up. Again, I put in the record that the Court had assured counsel prior to today that we would recess at noon and that this was not done and if there were a change on the Court's part, this was done ex parte as far as I am concerned, and no attache of the Court, or anything else, advised me of same and the first I heard about it was some, pardon the word, gossip about it this morning. I was not told officially or anything and that by then, I had so arranged my own work

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schedule that there was no way I could recover the night that had just gone before. I am suggesting to Your Honor that I'm trying the best I can to try this case. If Your Honor will tell me—are you looking for some specific thing that I can help you?

The Court: No, I'm going to put something in the record when you're through. Go right ahead.

Mr. Taylor: Well, I think—what did you want to put in the record?

The Court: This is the same thing Mr. Taylor is complaining about, about the Court changing its mind about

running on Saturday, is just like the case when Mr. Taylor filed this motion, motion to discharge prospective jury and asked for a hearing right after the close of the testimony for the day, we all came back here, everybody was here, but Mr. Taylor—

Mr. Taylor: (interrupting) Everybody—I didn't hear what you said, everybody was here with, or by?

The Court: I said everybody was here, but Mr. Taylor. It's just like every other day, as soon as the last witness says the last thing, Mr. Taylor is headed for the alley.

[1361]

Mr. Taylor: I'm trying to prepare my case.

The Court: As far as I am concerned, it's immaterial to the Court whether this man or that man is convicted or not convicted. That's not my purpose. I am here to see that both of them, and also the Commonwealth, get a fair trial. The way Mr. Taylor has conducted his case, he is the one who is preventing his client from getting a fair trial, and not the Court.

Mr. Taylor: May I speak to the record?

The Court: I haven't finished. It's a shame that the record cannot show his tone of voice, his motions around the courtroom, his antics. All the record has got from the very first day is what he has said, which is sufficient for me.

What I am doing, I think is right. I think if it gets to that, the record will speak for itself and bear me out.

Mr. Taylor: May I speak to the record, if Your Honor please?

The Court: Go right ahead.

[1362]

Mr. Taylor: There has not been a day in this trial that I haven't asked Your Honor if I was excused and Your Honor assented that I was, indeed, Your Honor has signed orders every night, on my proffering them, allowing me to confer with my client.

The Court: That is not true, as far as I am concerned, that he's asked me if he's excused every night. Mr. Taylor says it is to him, but it's not to me, I don't recall that.

Mr. Taylor: Well, I disagree.

The Court: I have signed his orders so he could see his client every night.

Mr. Taylor: Let me say another thing in the record. I've got an obligation as an officer of the Court and an officer of the Bar to try that case in there. When the case is over with for the day and the Court is adjourned, I will, indeed, split for the alley. I am not the slave of anybody and I'm amenable to law and I've got my rights. I do so to prepare my trial and my case and I would just like to state that position very fairly. As long as the Court will fairly and plainly express its wishes to me, my purpose is to respond thereto, within the law.

The Court says it's a shame that my

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tone of voice and antics are not carried on the record. I would say similarly that, in my opinion—now, we are out of the hearing of the jury—that the Court's overbearing contentiousness in regard to me, both by phrase and by its utterances and by the expression on its face and the waving of its arms grandly, causes me to think that it's the Court that is prejudicing the trial of this case. However—

The Court: (interrupting) Whatever I say to you goes through one ear and out the other, Mr. Taylor. I have told you and the record will bear me out, at least 15 or 20 times, not to do this, or to do this, or do that, and you just completely, completely disregard the Court's orders.

Mr. Taylor: May I know this from Your Honor? Did the Court tell me not to get that blackboard in when I asked the Court?

The Court: I did not tell you not to bring it in.

Mr. Taylor: All right, sir.

The Court: I told the bailiff to take it out, after you get it up here and you put something on it and you underlined it three or four times.

[1364]

Mr. Taylor: Does Your Honor understand that my purpose is to defend my case?

The Court: I think that's probably what you're here for, I'm not sure.

Mr. Taylor: May I—I am sure, though and I'm as sure as anybody. Let me say that I differ greatly with Your Honor that I'm prejudicing the defense of my client, Tinsley, and I think at this time that I'm going to move Your Honor to bring my client in and go on the record so that I may protect myself.

The Court: Overruled.

Mr. Taylor: I want to make very plain that this in Chambers conference does not include my defendant as being present and I'm moving Your Honor right now that you inquire of my client and that you spread on the record of this case his reaction and determination and opinion and judgment and position as to whether or not he objects to the way I am conducting his defense.

Now, I think, Your Honor, in fairness, when you put into the record of the case something like you just have where you, using brute power of your office, saying to me that I am damaging my client, that I would appreciate Your Honor giving me—

The Court: (interposing) That's my opinion.

[1365]

Mr. Taylor: —opportunity to respond to it and I think, in fairness, that the record should show what my client thinks on the proposition and I'm requesting that you might permit that to happen.

The Court: Put it in there, I don't care. I'm not interested in what he thinks about how you are conducting the

trial. The Court is interested in a trial that's conducted properly—

Mr. Taylor: (interposing) And so am I.

The Court: —and proper respect is shown to the Court which you, for some reason, can't learn.

Mr. Taylor: Your Honor, I'm going to respond to that most respectfully by saying that I consider that I am conducting this trial as allowable under law. That's what I live under and I'm not trying to get into any personality flaps with anybody. I request again that my client, Narvel Tinsley, be allowed to speak to the record as to whether or not he has any complaints at all about the way I am conducting his defense and I request this as a matter of due process because you are impinging my professionalism.

[1366]

The Court: Get the Sheriff and bring him in here.

Mr. Fleming: While we're waiting for him, could I renew my motion to set aside the swearing of the jury and sever the trial of the case of William Michael Tinsley on the ground that the situation that exists between defense counsel and the Court has an adverse effect upon the trial of his case.

Mr. Schroering: Commonwealth would like to respond to that. If the Court has obviously been conducting itself in the highest decorum during the proceedings. Anytime there have been statements between Mr. Taylor and the Judge, it has been out of the hearing of the jury and back here in Chambers and under no circumstances have there been any indication in open Court of any dispute, argument, or otherwise between defense counsel, Mr. Taylor, and the Judge, and I might say that the Judge has in every way acted with decorum in this case.

Mr. McCall: On behalf of William Michael Tinsley, we submit the same thing and we feel as though Mr. Talyor's what we have previously described as side comments, et

cetera, have prejudiced not only his own client's right to a fair trial, but our client.

Mr. Taylor: May I respond to the record?

[1367]

Mr. Schroering: I think Mr. Taylor is trying the case as he probably—

The Court: (interposing) Show I've left the room.

Mr. Schroering: —in the best interest of his client, and the Commonwealth is not in a position to judge. We want to go by the rules.

(Whereupon, the Court returned to Chambers and the defendant, Narvel Tinsley, was brought into the Judge's Chambers, accompanied by a Deputy Sheriff.)

Mr. Taylor: Your Honor, may I proceed, please?

The Court: All right.

Mr. Taylor: Thank you, Your Honor. Your Honor, before Your Honor left the room for a minute we were waiting for Your Honor to come back and the Court has now come back and we appreciate it. I was going to say two things relative to the last thing you just said. I was going to say, Your Honor, that it's been talked about side comments—I've been getting just as many and they're said in such a way that you can't hear them and Mr. Ousley being the worst—

The Court: (interrupting) I agree with that.

[1368]

Mr. Taylor: In fairness—you say, "I agree with that," it's kind of the hen or the eggs, or however that thing goes, honestly, I believe if you want to tally up side comments. Now, another thing, I've got no—I want to finish this case without any rancor with my brother lawyers here and so forth, and I know they're doing the best they can for their client, Judge.

The Court: You want this lady back in here?

Mr. Taylor: Sir?

The Court: You want the girl back in here?

Mr. Taylor: She's taking a little walk. She's all right. I thank you very much. The record will show that Mr. Baxter Shilling is here and I appreciate your offering to wait, Your Honor. I believe she'll be all right. She's not been in the legal business very long.

What I was saying to Your Honor is that it's—oh, yes—it's easy and maybe a defense and I'm not attributing it to anything improper, I say maybe it's a defense mechanism for William Michael to say that ole Dan Taylor, but Judge, this last bit with the blackboard, in the first place, I have gotten it into the record over and over that we thought we were going to

[1369]

stop at noon and I'm just about past my endurance. I'm going to try, Your Honor, with every drop of blood to follow the Court's orders and so forth, but it's almost like a torture chamber at this point, Your Honor, with all of this flak—I don't mean from the Bench with that word, Judge—I mean down there on the floor and the way people are sitting and the different juxtaposition from the different lawyers and so forth and so on. What I would request to know, I've asked the Court's permission to bring my client in and he's out of hearing of the jury and here in Chambers and I would request that Your Honor might swear him to tell the truth and that his testimony be restricted only to whether or not he wants me to continue as his lawyer and that he not be asked in anyway about anything having to do with the case. May I do that, Judge?

The Court: Just let him go ahead and—

Mr. Taylor: (interrupting) Would you swear him?

The Court: You want me to swear him?

Mr. Taylor: If you would, please.

[1370]

NARVEL TINSLEY, called as a witness by the defendant, Narvel Tinsley, having been first duly sworn, was examined and testified as follows:

Mr. Taylor: Did Your Honor want to conduct it?

The Court: No, go ahead.

Direct Examination

By Mr. Taylor:

Q. You're Narvel Tinsley, is this right?

A. Right.

Q. You're on trial right now for the murder of two policemen, aren't you?

A. Right.

Q. You know me, Dan Taylor?

A. Yes, sir.

Q. What am I to you?

A. My lawyer.

Q. All right, if—you have been here with us for the last six days?

A. I'm not quite sure how long, but I know I have been here.

Q. Now, during the time of trial, Mr. Tinsley, as much as I was able to, have I on nights come

[1371]

over and conferred with you at the jail?

A. Yes, sir.

Q. And worked with you toward preparing your defense?

A. Yes, sir.

Q. Have I explained to you, sir, the different elements I thought were important in making your defense?

A. Yes, sir.

Q. Do you feel that I have been fair to you?

A. Yes, sir.

Q. Have you paid me any money?

A. No, sir.

Q. You had called for me earlier, before I first saw you to defend you, isn't that right, sir?

A. Yes, sir.

Q. Are you dissatisfied in anyway with my defense?

A. No, sir.

Q. Do you want me to stop defending you?

A. No, sir.

Q. Do you want to ask the Court for another lawyer?

[1372]

A. No, sir.

Q. Do you want to ask the Court for any member of the Louisville Bar Association to even assist me?

A. Nobody, but whoever you need, if you need him.

Q. Do you have that kind of confidence in me?

A. Yes, sir.

Q. Are you willing to leave your life in my hands now?

A. Yes, sir.

Mr. Taylor: Mr. Schroering may care to ask.

Mr. Schroering: I'd just like to ask a few questions relative to this question about lawyers.

Cross-examination

By Mr. Schroering:

Q. Originally, the Court appointed a lawyer for you, Mr. Warner. Do you recall Mr. Warner?

A. Yes, sir.

[1373]

Q. Did you talk to Mr. Warner about the case?

A. I talked to him about it.

Q. Did he have certain doctors to come in to examine you, or did he talk to you about having doctors to examine you?

A. I wouldn't want to say, because I'm not sure. I'm quite sure he did, but I couldn't swear to it because I don't exactly remember.

Q. How many times did Mr. Warner talk to you about the case?

A. I didn't even get to see him that regular, but he come over maybe—not to be exact, maybe four times.

Q. He came over to the jail to see you, is that right?

A. Right.

Q. Now, did anybody else come over to the jail and talk to you about the case while Mr. Warner was your lawyer?

A. Uh-huh.

Q. Who was it that came over to talk to you during that time?

A. Some young guy came, but I don't know

[1374]

his name and I'm quite sure he had somebody else with him, sometimes, but I don't exactly remember what they was, but I remember something about doctors and I think they did bring some doctors in there.

Q. Was this from the Legal Aid Society, or do you recall?

A. I can't remember.

Q. Now, do you want to tell the Court how Mr. Taylor first came over to see you?

A. I remember I had tried to write letters. I wrote letters and they came back. I had call-out cards and the man tore them up. I sent my people on the street to go to try to get him for me. I tried and finally I wrote a letter.

Q. It was your specific request that you wanted Mr. Taylor to represent you, is that correct?

A. Yes.

Q. Did any other lawyer see you besides Mr. Warner and Mr. Taylor, and talk to you?

A. About the case?

Q. Yes?

A. I don't think so.

Mr. Taylor: Your Honor, I hate to interrupt Mr. Schroering, but has this got anything to do .

[1375]

with whether he wants me to continue representing him?

Mr. Fleming: Let's get back, it's 5 after 4.

Mr. Taylor: I think we ought to adjourn until Monday to get ourselves together. I really do. We've got 55 minutes—

The Court: I have one question I'd like to ask Mr. Tinsley.

Mr. Taylor: (To Narvel Tinsley) Please respond to his questions.

The Court: Has Mr. Taylor represented you before, sir?

Mr. Tinsley: No, sir, only this time.

The Court: How did you know about his name, or how did you know about Mr. Taylor?

Mr. Tinsley: One of my used to be girl friends that I had children by—well, I talked to my sister and everybody and the teacher and stuff and they told me he was a good lawyer and I tried to think of his name at first, but I couldn't think of it. I asked Mr. Warner about him. All I knew was I told him his last name started with a T and he'd been on a lot of cases, but I couldn't think of his name. He said he couldn't think of it.

[1376]

Mr. Fleming: Let's finish up with this witness today.

The Court: We'll finish up with this guy and quit. O.K.?

Mr. Taylor: O.K.

(End of proceedings in Chambers.)

* * * * * * *

[1798]

Mr. Taylor: Your Honor, would you indulge counsel?

629. Which officer did he give it to?

Mr. Taylor: I wonder if you could stop him for just a minute.

The Court: Are you making an objection?

Mr. Schroering: Is there an objection?

Mr. Taylor: Uh-huh. I'm making a motion.

Mr. Schroering: Out of order, Judge.

Mr. Taylor: Well, you haven't heard what it is yet. It might be very much in order.

(Conference at at Bench between Mr. Taylor and the Court, out of hearing of jury and reporter.)

Mr. Taylor: I'm requesting an in-place recess for about 15 seconds with my fellow lawyers on this point, if I might, sir.

The Court: Mr. Taylor, sit in a chair, please, sir. Go ahead and proceed, Mr. Schroering.

Mr. Taylor: Your Honor—

[1799]

630. (interrupting) I believe that you have testified, have you not—

Mr. Taylor: (interrupting) I'm moving the Court for a—

The Court: (interrupting) I'm overruling you, sir.

Mr. Taylor: I'm asking to go on the record.

The Court: I'm overruling you, Mr. Taylor.

Mr. Taylor: I am asking—I am moving the Court to go on the record with my objection.

The Court: Let's go on the record in Chambers.

Take the jury to the jury room, with the same admonition.

IN CHAMBERS

The Court: It's the order of the Court again that Mr. Taylor is in contempt of Court. Also, I want to say something to everybody.

[1800]

I can stay here—I'm going to be here four years. I can

try this case for the next four years, if you all want to drag it out, want to ask the same questions over and over. It doesn't make a bit of difference to me, if that's what you all want to do. It doesn't make a bit of difference to me. I'm saying his not only to Mr. Taylor, but to Mr. Schroering, Mr. McCall and Mr. Fleming. Mr. Scott hasn't asked a question. So, I think a lot of this we are just rehashing the same old stuff over and over. I realize that you—that the Commonwealth, and one reason I haven't sat on you as much as I probably should, is that the Commonwealth has the duty to make their case and they can't rely on Mr. Fleming making it or Mr. Taylor making it for them. Therefore, I kind of let you rehash a lot of this. That's the point I'm mentioning about let's get on with it. As far as Mr. Taylor is concerned—I won't say anymore. The record speaks for itself.

Mr. Taylor: May I request to speak to the record?

The Court: Go right ahead.

[1801]

Mr. Taylor: Thank you, Your Honor.

If it please the Court, I would like to clarify my position of the last five minutes. Now, Mr. Schroering has been questioning the witness about the colloquy between the defendant on trial, my client, and the police officers. I requested—I was going to attempt to talk to counsel for William Michael Tinsley very briefly, I asked you for 15 seconds to cover a distance of maybe 6 yards, not very far, to advise them that in my humble judgment, we wanted to move Your Honor to admonish, as this point, as to the reciprocal rights between the parties in an arrest situation like that. Now, Your Honor might feel that this would be cured by, say an instruction on the right to arrest. I think it is incontestable, Judge Hayes, nobody claims—the Commonwealth doesn't, and there's been no proof at all that these police officers found the commission of a felony taking

place right then, that they had strong suspicion, or whatever that arrest statute requires, that there had been a felony, and/or further, Your Honor, they were exercising a valid arrest warrant, or, Your Honor, I left out one, that there was a misdemeanor being conducted, or done, in their presence, or that they were in furtherance of a search warrant. Now, I submit to Your Honor that that being the case, from the

[1802]

standpoint of law, leaving aside the sociology for a minute, and leaving aside, if you please, Your Honor, the different personalities which are apparently lying one against the other, somewhat abrasively in this case, that as a matter of law, Your Honor, if you will accept as being true those five propositions I just stated, that the colloquy and the relationship, vis-a-vis, I might say, Narvel Tinsley and the offending—ah, so—the offending police officer, that they could as well have been totally insulated. In legal theory there was no right in the officer to be conducting himself as he was then doing. Now, this being the case, Judge, just as when you move into another area, if I'm going to adequately represent my client, I wanted you, if you felt I was correct in the law, to see that this was the time, just as you instructed on two occasions already that this business—on three, No. 1, Your Honor, was relative to having previous convictions for felony, which Mr. Schroering stood right there and flouted every rule that we know about asking that question, unless this is the first case he's tried. I know he's tried more than that, but you instructed then. Secondly, Your Honor, it came up about the pistol, was it stolen, and so forth. You put the quietus on that and I think correctly. The third thing went through my mind,

[1803]

maybe it's bootlegging, but at any rate, you have shown us this afternoon that when a request is timely, when we have timely requested, that if our objection was properly

made you would admonish the jury that what the background law was applicable to that then point. Now, here's how we got into trouble, if you will permit me to make a suggestion. Obviously, Mr. Schoering was about to get the damage done and it was a question of a leak in the dike, or worse, and so forth, but he persisted in taking advantage, or trying to, and doing things, and one of his devices—Mr. Schroering, we're out of hearing of the jury and in Chambers—I have observed, is to continue to—I want to use a mild phrase—to continue with his talking and his questioning and his interrogating of a witness, while Your Honor still has a motion up. Now, Judge, I would be less than flesh and bood to sit there. I would suggest, with all due respect to my brothers, Scott, Fleming and McCall, that here might be a tiny bit of merit in my intellectual position in this regard, there might not, but let's say all I wanted to do was resolve that. I wantd to request of them their support in getting an admonition from Your Honor, or an instruction from the Bench to the now jury as to the reciprocal rights existing between the interrogating and harassing policemen and the non-offending American citizen that was getting pushed

[1804]

around then. Now, possibly Your Honor would have said, "You're wrong, Mr. Taylor," but that's really not how we got back here in this room. I then asked you for an in-place recess for 15 seconds, Schroering—Mr. Schroering—I first asked you if you would just keep him quiet, I think, I may have put it somewhat indelicately, long enough for me to discuss with the three other lawyers, none of which had a flicker of recognition on their faces, which is their business, and I'm trying to get over there and talk to them and Mr. Schroering continues, just like a bull in a china shop, to go like a juggernaut to plow right on through. Now, if this is fair, it escapes me how it could be. Then, he continues to open this wound which I see coming and I'm asking you

to let me come to the Bench and tell you what and you say no and the next thing you know, I'm back here.

The Court: That's the reason. The reason you're back here, Mr. Taylor, is not that I'm saying I'm correct in my ruling, or I'm incorrect, but I am saying this, when I make a ruling, that's it. When I tell you to sit down, I mean to sit down. When I say overruled, I mean overruled. When you ask me for a conference or a recess, or to go on the record

[1805]

and I say overruled, that's exactly what I mean. I don't want to hear another word.

Mr. Taylor: May I point this out to you, and I may be in error, but I don't believe I am, I got dual instructions, as I understood it from the Court. I heard the Court say on the one time, "Yes, go and confer," and then—now, maybe the Court didn't understand that I was asking you that I might confer, and with him waiting long enough to see if we wanted to then make a motion. Then, you said and someone, I don't know who, it was either the Bench, or Mr. Schroering said, "We'll just continue on." Well, to do that completely emasculates the position that I'm driving at. I've got to defend my client. I do not intend to let Mr. Schroering run over me and convict my client on the basis thereof. Now, if Your Honor will just please reflect, or the record will show, possibly I misunderstood, but I don't believe I did. It was my understanding you had given me permission—I wasn't asking to go out of the place, I wasn't asking for a cigarette drag, or I wasn't asking for one of ours to go out of the room, or something, I was merely—is it asking too much, the 7th day of trial, the prime case in town, worst one I've even seen, three days to get the jury, go through three panels to get them, costing all of us a

[1806]

great, great energy, and so forth, not getting paid at all,

trying to do the right thing, is it asking too much to ask 15 seconds with three other lawyers and when Your Honor sustains me and Mr. Schroering continues to talk, to ask Your Honor if he won't enforce the first order that you gave to me. Now, that's my position.

The Court: I think you probably misunderstood me.

Mr. Taylor: Well, maybe I did.

The Court: I think the record will show that it was the Court that told Mr. Schroering to continue.

Mr. Taylor: May I know this, please, with all due respect to Your Honor, if I ask you, sir, for an in-place recess, wouldn't that contemplate that Mr. Schroering would at least stop talking?

The Court: I think it's up to me.

Mr. Taylor: Do you mean, sir—

The Court: (interrupting) If you want to go over and talk to these gentlemen, it's all right with me, but I'm not going to stop the trial every so often.

Mr. Taylor: With all due respect, Your Honor, I was under the impression that heretofore the

[1807]

Court didn't greatly object, as long as I maintained protocol and didn't offend in anyway, if I went over and talked to them at any time. What I was requesting of you was to—what is it they say in television instant reply—was to stop the action long enough for me to discuss this point with these lawyers. I might add that I am still requesting you about 30 seconds with them, if I could have it?

The Court: You can have it.

Mr. Fleming: We don't need 30 seconds to talk about that, because, as far as I'm concerned, the law of the case comes at the end of the case.

Mr. Taylor: All right, it doesn't break my heart that you don't want to talk.

Mr. Fleming: If that's what you want to talk about, why that's—

The Court: (interrupting) I've made the ruling.

Mr. Taylor: Are you saying that you don't want to step outside to discuss things with me, if I suggest that it might be well?

Mr. Fleming: I'll discuss it with you, but I don't want to take up the time, if that's what it's about.

[1808]

Mr. Taylor: Well, you know, I just don't think—

The Court: (interrupting) When you get through, come on back in.

Mr. Taylor: Yes, sir.

(Whereupon, defense counsel went out into the hallway and conferred.)

Mr. Taylor: Your Honor, I want to make a motion to Your Honor that I want to request you to instruct the jury from the Bench now that there's been no evidence that the police officer was conducting a lawful arrest and that this being the case, the responses of Narvel Tinsley can certainly—should be viewed in that light.

The Court: The Court is overruling that.

Mr. Taylor: While we're in Chambers, can I ask you another thing—

The Court: (interposing) Yes.

Mr. Taylor: —in the form of a motion. I will move the Court, of course, to have the jury view the scene. This could probably most effectively be done at dark. What is your feeling on that, Your Honor?

[1809]

The Court: I don't know, offhand.

Mr. Taylor: Let me tell you why I think it's important. Narvel Tinsley is right. I've been to the scene many times now, half a dozen, under different circumstances, and, for what it's worth, my judgment is that the chart does not adequately represent the situation, in relationship—you might say, how can you mess up if you put distances down.

I don't know whether it's a matter of perspective, or anything, but it would be a great, great help in this whole case if this jury could just see that alley—

The Court: interrupting) If they ask for it, then I'll have to consider it.

Mr. Taylor: Well, Judge, Your Honor, I know—

The Court: (interrupting) Provided the area hasn't been changed.

Mr. Taylor: No, it's about the same. Judge, they're not going to ask for it, plus, we're close to that case that went up, the case where the jury was already in—

Mr. McCall: (interrupting) The Moore case?

Mr. Taylor: Yeah. Do I have the

[1810]

facts right, that they were in?

Mr. McCall: Yes, they were in deliberations. We don't want to do that.

The Court: No, I wouldn't do that.

Mr. Taylor: O.K. Now, I consider, without holding myself out to be the Court of Appeals, I consider that that's a pretty serious error.

The Court: It could be.

Mr. Taylor: Yes, sir.

The Court: If they do it, we'll do it before closing argument.

Mr. Taylor: Judge, they're not going to say scat.

Mr. McCall: Mr. Mikkelson might ask. Our hope is in Mikkelson, if anybody's going to do it.

Mr. Taylor: You're surely not saying the only way you'll sustain the motion is if the jury—

The Court: (interrupting) I'll consider it before we finish.

Mr. McCall: Judge, may we just make one brief observation on the record. We move the Court to instruct both —all lawyers involved here, that objections are to be made with, "I object" and the reasons why, and no colloquy be-

tween Mr. Schroering and Mr. Taylor, and constant movements around, and both of them up there

[1811]

together questioning the witness. It disturbs—

The Court: (interrupting) I'll not only make an instruction to that, I'll make an order to that effect.

Mr. Taylor: May I know—I want to know what the order is, exactly.

The Court: That if you have an objection—

Mr. Taylor: (interposing) Yes, sir.

The Court: —and while we're out of the hearing of the jury, I want every counsel to remain seated until he's asking the questions, or until a witness is pointing something out on the blackboard that everybody wants to see. Every counsel get a seat and remain seated. If something comes up and you want to make an objection, holler it out, "I object." Then I want the guy that's asking the questions to stop—

Mr. Taylor: (interposing) Stop. That's fair enough.

The Court: —until I can decide the objection. I want no arguing the objection in front of the jury, no side quips between any of the attorneys, anything of that nature.

[1812]

Mr. McCall: Then if you say approach the Bench on any objection, then we can come up and argue it.

The Court: That's right.

Mr. Schroering: And if the Court rules in a particular case—

The Court: (interposing) That's it.

Mr. Schroering: —that's it, and no constant asking the Court to change its mind.

The Court: Right or wrong, that's it.

Mr. Taylor: May we—well, I won't say it will be off the record, because I understand Mr. Schroering doesn't want anything off the record, but occasionally a situation —if there were a tiger, a Bengal tiger behind you, about

to attack you, and I say, "Your Honor, move your head," and you say, "Sit down, Mr. Taylor," I would probably go against—if there were a Bengel tiger—against what you told me directly, and try to deflect the tiger, or lure him, or warn you. Sometimes, circumstances alter things.

Now, I'm suggesting to you—I don't have a tiger.

The Court: Hold that tiger.

Mr. Scott: If you've got a tiger,

[1813]

you're really in trouble.

Mr. Schroering: Judge, do I take it that Your Honor is ruling that when you make your ruling from the Bench, that counsel are not supposed to go to the Bench and continue to argue it?

The Court: That's right.

Mr. Scott: Judge, may be put in the record a motion to sever and the same continuing objection made on the ground of what has occurred in the past and the recent outbursts?

The Court: Let's take about a 5 minute break.

(Whereupon, there was a short recess, after which the following proceedings were had in Chambers.)

Mr. Schroering: The Commonwealth requests the Court not to have any hearings off the record. Mr. Taylor is constantly going to the Bench before and after questions are asked, carrying on conversations with the Court.

The Court: I'll do that, but I think one of you all should approach the Bench.

Mr. Rosenbaum: Mr. Taylor approaches

[1814]

the Bench, and says, "I'll be off the record." I think everything ought to go in the record, unless there is an agreement to the contrary.

The Court: All right.

Mr. Schroering: And the reason why the Commonwealth changes the manner in which it usually tries a case with

Mr. Taylor is for the reason that everytime the Commonwealth approaches the Bench and gets within arm's distance of Mr. Taylor, he does not know how to conduct himself like an attorney and a member of the Bar. This is my feeling in this case and from the beginning, it's a poor commentary of our Bar Association. Let's take about 5 minutes and cool off.

* * * * * * *

[1895]

Mr. Taylor: Well, say something, please. Now, how about that bus? When do you want to move the jury out?

The Court: I don't know.

Mr. Taylor: Now, another problem, Your Honor. There are people out in that hall trying to get in this courtroom and empty seats, and my client is not getting a public trial.

The Court: There's plenty of public out there. If you want to put that in the record do so, but you're overruled.

Mr. Taylor: May I—

The Court: (interrupting) The courtroom's full enough. If I've got two people out there, that's a public trial, as far as I am concerned.

Mr. Taylor: I object very vehemently to what His Honor is ruling in that regard.

Mr. Schroering: At this time, the Commonwealth tenders the statements which it has in its possession, given to them by the defendant, Hampton Thomas, and, in order to show the nature of this testimony and also show that he has no evidence that would be in anyway helpful to the defendant, Narvel Tinsley, I'll give them to him now.

[1896]

(End of proceedings in Chambers.)

IN OPEN COURT

(At Bench, out of hearing of jury.)

The Court: Miss Virginia, let the record indicate the defendant, Hampton Thomas, who is under indictment,

being called by the defendants in this case, on advice of his attorney, has taken the Fifth Amendment right not to testify. This has been sustained by the Court, over the objection of defendants.

(End of proceedings at Bench.)

* * * * * * * *

[1905]

Mr. Taylor: Your Honor, I call Bob Winlock, that gentleman sitting right there, under subpoena.

The Court: Mr. Winlock?

Mr. Taylor: And I'll waive the fact that he's been in the courtroom all this time.

BOB WINLOCK, called as a witness by the defendant, Narvel Tinsley, having been first duly sworn, was examined and testified as follows:

The Court: Can I see the witness and all the lawyers in Chambers?

You may go back to your room, ladies and gentlemen, with the same admonition.

IN CHAMBERS

The Court: We're in Chambers again with Mr. Winlock, who's been called as a witness for the defendant, Narvel Tinsley. Mr. Winlock, you've been in the courtroom all the time. What's

[1906]

the nature of this testimony, or what's this for?

Mr. Taylor: Is the Court inquiring of counsel for Narvel Tinsley?

The Court: Yes.

Mr. Taylor: Your Honor, the question will be posited to Mr. Winlock as to whether or not during the investigation of this alleged crime he, indeed, or his minions were not down at the actual scene of the investigation with their

television cameras grinding right away, their lights photographing evidence being gathered. Now, the relevancy is, of course, the over-all theory of defense here, that my client, of course, being innocent, he's being framed by, or that a clumsy attempt is being made to do so, by the agencies in this city, including the media and including certain arms of the legal apparatus. I have alluded to this in my opening statement. To not permit me to do it would be patently unfair. That's all I want to know. I'm not going to ask Mr. Winlock—although I understand, may the record show quite tersely, had previous occasion to marvel at Mr. Winlock's news gathering ability, he apparently being privy, it seems to me, to internal workings of the Police Department on occasion, but I don't intend to get into that. Let's say this is a free country and that's his business. I want to ask one or two simple questions in that area that I have

[1907]

indicated.

Mr. Winock: I wouldn't object to telling him how I happened to be there.

The Court: Pardon?

Mr. Winlock: I wouldn't object to telling him how I happened to be there.

Mr. Taylor: Even the suave Mr. Winlock has no objection.

The Court: What do you know about the case, know? That's what I'm interested in is the merit of the case.

Mr. Taylor: Your Honor, I object to your asking him, if I might, respectfully, inquiring of him in that regard, because he's got his sources and he may know something helpful to the Commonwealth.

The Court: He doesn't have to divulge his sources.

Mr. Taylor: If you please, Your Honor, you've asked him what does he know. If the Court is going on its own motion inquiring into that area, all I want to know from

this newsman, who is so well acquainted with the citizenry of Louisvile, you can hardly turn on the set, but you don't see his face, I just want to know if he, or some of his underlings were down there in this ghetto area where the deprived blacks live, taking pictures of the

[1908]

evidence gathering for the edification of the population of Louisville.

The Court: I can't for the life of me see that that has a thing to do with the case.

Mr. Taylor: Well, it has this to do with it, Judge.

The Court: I'll tell you right now, we're not going to get into any situation, as is often the case, where this is black against white, racism. There has been no question of that brought out in this trial whatsoever.

Mr. Taylor: What's going to prevent us from getting into that situation?

The Court: Because it hasn't got anything to do with it.

Mr. Taylor: Your Honor, I suggest that that—most respectfully—that that's for the triers of the fact to determine in this case.

The Court: Well, it's for the Court to determine whether you can even start it, and I'm saying right now that I'm making a ruling that that will not be brought out in this case and this witness will not testify.

[1909]

Mr. Taylor: Judge, you're acting, I would suggest most respectfully, on the basis of rancor. You can't take the position that race is not an element political case. This is, of course, a political case.

The Court: There is no evidence even that this is a political case. That's what you guys try to make every case that comes into Court.

Mr. Taylor: Who are you referring to?

The Court: I'm talking about you.

Mr. Taylor: And who are the guys?

The Court: I'll change that to Mr. Taylor.

Mr. Taylor: I try to make every case a political case?

The Court: Yes, sir.

Mr. Taylor: I see.

The Court: And I will not let this man testify.

Mr. Taylor: Judge, you're hampering my defense—

The Court: (interrupting) What I'm going to do now, Mr. Taylor, is make you submit to me a list of your entire witnesses now.

Mr. Taylor: Adjourn until 2:00 and

[1910]

we'll prepare it.

The Court: I will not adjourn until 2:00. I'll give you 15 minutes. If you don't already know who your witnesses are—

Mr. Taylor: I know who they are, I don't go about with typewriters on my Hickey Freeman. (Throwing open his suit coat) Kuppenheimer, correct the record.

The Court: Write it on a piece of legal pad and I want it in 15 minutes.

Mr. Taylor: Your Honor, I want to take strong exception to your, and I mean this respectfully, only to express feeling, pulling the rug out from under the defense of Narvel Tinsley in this regard. What do you think that jury is going to think when Mr. Winlock, and this is only a figure of speech, slinks back out there and takes his seat on the front row and doesn't testify?

The Court: There's no reason whatsoever for you to say what you're saying against Mr. Winlock. You have a tendency of doing that to every witness, even your own witness you just called. You tried to browbeat her.

Mr. Taylor: Well, she said she didn't know, Judge, whether or not General Hospital treats bullet wounds in sewerage tunnels and even I know that. I know of

[1911]

no case, and I've had a lot of gunshot cases—you know, she's evading the question and this entire trial, I suggest to your client, my client, I feel, is not getting his legal rights. Now, my job—

The Court: (interrupting) What I'm saying again is you have no cause to say what you—

Mr. Taylor: (interposing) Your Honor—

The Court: —This man is not on trial.

Mr. Taylor: Your Honor, this man contributed another one of the straws trying to break the camel's back here. This man, in my humble opinion, in the interest of his already staggering reputation for news gathering, was out there before any other media photographing evidence being gathered before a warrant had even been issued for dissemination over channel 32, W, something or other,—I know it's near my house, I use another route to get there—so that everyone in the community could be saturated and brainwashed with a prejudicial preconception that these two Tinsleys were guilty. I know of no other case that this has ever happened in and if I am either stupid enough or meek enough to not raise the objection, I shouldn't have that shingle hanging out.

The Court: Sure, you have the right

[1912]

and you have made the objection and we've gone through this—

Mr. Taylor: (interrupting) And you're going to—you're now going to—you didn't have the Commonwealth produce ahead of time a listing of every witness I (sic) intend to call.

The Court: That's true.

Mr. Taylor: And you have, I respectfully say, continually ruled in this case favorable to the Commonwealth in identical situations and non-favorably to Narvel Tinsley.

Now, I have spent six weeks getting this defense together and I suggest to Your Honor that I should not have to reveal in a case of this nature to either the trial Judge and, especially since there are antagonistic defenses, ahead of time a list of who I'm going to provide.

The Court: Well, since the Court knows that you have subpoenaed newspapermen and so forth, I'm going to still direct you to—

Mr. Taylor: (interrupting) Judge, you're emasculating my defense by doing so. You're not allowing me to present a proper defense for Narvel Tinsley.

Mr. Schroering: Judge, may the Commonwealth say this, that had Mr. Taylor produced this

[1913]

witness on the question of whether or not there was any pretrial pubilicty, which hearing has already been had in this case, there would be no question about its relevancy, but I don't see, in view of the fact that this motion has already been ruled on, we've already had exhaustive evidence, the Court has already ruled, there's really no relevancy at the present time. Beyond that, Judge, as I see it, this particular witness has nothing, no relevant testimony to add at this time.

Mr. Taylor: Let me respond to that. If you're going to rule everytime that I'm about to get another point against Mr. Schroering, which we have quite a few, I'm persuaded to this point, if you're going to rule no, if you're going to stop me everytime that I start to put on any witness, it boggles the mind to think that of the 25 I contemplate, that I'm not right on one or two. This is not the kind of case where the advantage is in the defendant. You've got the Police Department, in my humble judgment, intimidating witnesses, you've got the whole media working, you've got a panel walking in here, 28 people which is already in the record, I've never seen before in my almost 20 years of experience, all with no conscientious scruples. Also—

The Court: (interrupting) Are you by

[1914]

that inferring the Court has rigged this jury?

Mr. Taylor: I didn't say the Court has rigged the jury. I will say this—

The Court: (interrupting) Are you saying the jury is rigged?

Mr. Taylor: Yes. I filed such a motion.

The Court: You're going to get a chance to prove that, Mr. Taylor.

Mr. Taylor: Would you care to tell me how in the world I'm going to prove what Mr. Schroering does, or whoever is responsible for that? You give me a chance—

The Court: (interrupting) I impaneled this jury. If it's rigged, I did it.

Mr. Taylor: I didn't say that the Court rigged the jury. Now, may the record be very plain on that. What I'm saying is that it is beyond mere coincidence that out of the hundreds of cases that I've tried to see 28 people march in there and none of them with conscientious scruples, and I'll say further to Your Honor, as I said to the Court, that an independent third party told me this is the practice and did not have the—whatever it takes to come forward and tell you—and the

[1915]

Court gave me the opportunity to go out and talk to him. Now, I cannot be proof for the other fellow's character. Now, I'm saying—that's another threat, I feel, and if the Court feels that I'm under some onus to prove that, I'm going to request the Court's help then in getting the past records, I'm going to bring in statisticians and we will have a hearing on it, but this behind the back—strike that. Strike the behind the back, please. I didn't mean to say it. I suggest that if the Court has any hearings or any proceedings in mind, that it fairly notice all parties in regard to same, and I mean fairly notice all parties.

Now, that motion is before Your Honor, the one in regard to the jury, and so forth. I have got problems enough trying to defend my client in these circumstances. How can you, on the one hand, sit there and let me take an opening statement, where you know full well what I'm driving at here, how can you on the same hand know, as I'm telling you directly, respectfully, Your Honor—

Mr. Schroering: (interrupting) Your Honor, I hate to interrupt—

Mr. Taylor: (interrupting) Well, don't interrupt then, Judge.

[1916]

Mr. Schroering: May the witness be excused?

Mr. Taylor: I haven't been able to finish a motion yet without Mr. Schroering interrupting me.

The Court: I told the witness that he will not testify. You can leave if you want to.

Mr. Scott: Could we suggest that Mr. Winlock be instructed not to repeat what's gone on in Chambers here, because I feel it would be detrimental to both—

The Court: I've told him that already.

Mr. Winlock: He told me that already.

Mr. Fleming: His appearance here is the result of his being subpoenaed in here by Mr. Taylor—

Mr. Taylor: (interrupting) It's incredible. It's incredible. I'm going to move Your Honor—

The Court: (interrupting) Don't discuss it with anybody.

Mr. Taylor: I'm going to move Your Honor again—pardon me, Mr. Winlock, did you want to say something?

Mr. Winlock: I was just telling the Judge after I think about all the circumstances, I don't

[1917]

know how I'm going to look now by not testifying, but whatever your ruling—

The Court: (interrupting) No, I'm not going to put you on. I'm not going to let Mr. Taylor put you on.

Mr. Taylor: Your Honor, may I take strong exception to that. Now, let's get in, if we might, please, into this other matter. I would request time to go to the Kentucky Court of Appeals as to whether or not I have to provide, in a case of this nature, the trial Judge a list ahead of time of who I intend to put on. This rule was not invoked relative to the Commonwealth. You are, to my humble way of thinking, I mention this in behalf of my client, that the defendant, Narvel Tinsley, in such case, is not getting due process, or equal protection of law, that he's getting what we call selective enforcement applied against him.

The Court: If you don't want to do it that way, here's what I will do. Every witness you call, not every witness, but when I know it's a newsman, I'm going to bring him back in Chambers after he's sworn, and I'm not going to listen to the same arguments in every case. I'm going to take him back here and he's not testifying, based

[1918]

upon what the witness tells me, if he tells me he knows nothing about the case, then we're going right back out there. We're not going to sit back here and argue the thing for 30 minutes. Everytime we come back here, we go over the same thing over and over and over and I'm going to move this trial on, one way or the other.

Mr. Taylor: May I say in response to that, Your Honor, the defense just took the case yesterday afternoon, Your Honor, that was in our 8th day of trial, please. We started, sir—

The Court: (interrupting) Which truthfully should have been in about the third day of trial.

Mr. Taylor: Well, that's no reflection on the defense, is it, Your Honor?

The Court: No comment.

Mr. Taylor: Well, will you give me just maybe five minutes to look through my stuff?

The Court: (Nodding head affirmatively.)

Mr. Taylor: Thank you, Your Honor. May I be excused now?

The Court: Take 10 minutes.

Mr. Taylor: Thank you, Your Honor.

[1919]

(End of proceedings in Chambers.)

IN OPEN COURT

The Court: Call your next witness.

Mr. Taylor: Your Honor, I'll call at this time Mr. Frank Clifford.

FRANK CLIFFORD, called as a witness by the defendant, Narvel Tinsley, having been first duly sworn, was examined and testified as follows:

The Court: All right, Mr. Clifford, will you step in my Chambers, please, sir, and all attorneys, in Chambers.

Ladies and gentlemen, step back in your room. We'll see if we can't send you to lunch now, to be back at 1:00, with the same admonition not to discuss the case.

(Whereupon, at 11:25 A.M. Sheriffs were duly sworn to take the jury to lunch, but before Court was recessed for the lunch break, the following proceedings were had in Chambers.)

[1920]

IN CHAMBERS

The Court: What goes on here, Mr. Clifford, is not to be reported. The ruling I make is immaterial to me. As far as I am concerned you can print that, but don't discuss what went on, what you said, and all that.

Mr. Taylor: Your Honor has called us in Chambers.

The Court: Yes, we're in Chambers again with the witness called by the defendant, Narvel Tinsley, Mr. Frank Clifford, who has already been sworn.

Examination

By the Court:

Q. Mr. Clifford, the Court is asking you, sir, do you know anything about the merits or the facts of this case, of your own personal knowledge?

A. I may. It's a hard question to answer. I have done research into aspects of the case, and I don't know that what has been disclosed to me are facts, or not.

Q. Are you saying what testimony you would

[1921]

have would be based on what someone else told you?

A. Yes, sir.

Q. You have nothing then of your own personal knowledge that you could state?

A. I don't believe I do. Let me stop here and say that I understand I have been called on the basis of an article I wrote. I haven't looked over that article recently. It might be a good idea that I look at it.

The Court: All right. Go ahead and look at it.

(Whereupon, the witness reread the article.)

The Witness: To the extent that this article is reproduced, which, I don't know how much of it was torn off, I imagine there's a little bit left—

Mr. Taylor: (interrupting) Here you are, I didn't purposely withhold that. I didn't know it was part of that article. Apparently my staff didn't tape it. Someone will have to be fired.

The Witness: This article is based on what people have told me, with the exception of some statistical records that I gained about population and

[1922]

incidence of crimes in the Smoketown area which is based, I understand, on public record or records I saw.

The Court: Can I see it, please?

The Court is going to rule this witness cannot testify. He has nothing of a material nature to add to the case.

Mr. McCall: Judge, it is possible he might know, based upon talking with people out in the Smoketown area people indicated to him Officer Hayes' reputation—

The Court: (interrupting) He can't base it on hearsay. He's testifying strictly from hearsay.

Mr. Taylor: Your Honor, may I respond to that, please?

The Court: He doesn't know Officer Hayes. He knows, based on somebody else's knowledge.

Mr. McCall: That's right. I think that's actually the test, though, knowledge he gets from people in the community.

The Court: I think you have to get some person in that neighborhood who knows that reputation, to put it on.

[1923]

Mr. Taylor: Will you let us—excuse me, was the Court finished?

The Court: Yes.

Mr. Taylor: Will you let us put such a person on, please? We have them.

The Court: If his character is in issue. I don't know if it's been put in issue.

Mr. Taylor: It's not going to be put in issue, if you don't allow me to do it.

Mr. McCall: Well, Judge, I don't believe his character has to be in issue on that question alone.

The Court: If you've got somebody that knows his general reputation.

Mr. Taylor: Hayes, sir?

The Court: Yes, or either officer.

Mr. Taylor: Thank you, Your Honor.

The Court: But you can't get into specific acts. The law is very specific. It's the general reputation.

Mr. Taylor: All right. Thank you, Your Honor. Now,

will you permit me to do this? Will you permit me merely to use this—pardon the expression, please—to request this newsman to at least authenticate that article for the jury?

[1924]

The Court: No.

Mr. Taylor: You're not going to let that into evidence?

The Court: No, the article? Absolutely not.

Mr. Taylor: Well, if you please—

The Court: (interrupting) You can put it in in Chambers here.

Mr. Taylor: As an avowal?

The Court: As an avowal as to what it is and—

Mr. Taylor: (interrupting) May I do that then and would the record so reflect, Your Honor.

Now, may I say further, would the Court permit me, and I promise I'll give it back to Mrs. Klapheke, to work from it?

The Court: (Nodding head affirmatively.)

Mr. Taylor: Thank you. I give you my word, Your Honor, I'll give it back to Mrs. Klapheke.

May I, again, please, place a very strong objection to the Court not permitting this witness to testify, and state to Your Honor that part of the theory of the defense here is that the actual empirical evidence against Narvel Tinsley, and that is the legally acceptable and the convicting-type evidence is so totally defunct,

[1925]

deficient and non-existant, that in its zeal to find two habitues for death row to atone for the death of two police officers, that the entire power structure in this county and community have been brought to bear against Narvel Tinsley, Jr., my client. This being the case, I earnestly suggest that Your Honor would be correct in ruling that I have a right to show this framework, this framing framework, to use a clumsy phrase, this includes the newspaper.

For instance, I thought it included channel 32, out there photographing evidence while it was being gathered.

Mr. Rosenbaum: Can we ask that the witness be excused, Judge?

Mr. Taylor: Well, that's the end of my—

The Court: (interrupting) As I stated before, Mr. Taylor, I'm not—I don't have a crystal ball. I don't know if I'm entirely right or wrong. I'm calling the shots as I see them—

Mr. Taylor: (interposing) Well, wouldn't it be well—

The Court: —and what I'm doing is I differ with you on that. I don't think you're correct. If you think you are, then the Court of

[1926]

Appeals will probably tell us both we're wrong.

Mr. Taylor: Your Honor, if Your Honor thought that it was marginal in the Court's decision, would it not be well under our philosophy as civilized men in the Western Hemisphere to err in favor of the defendant?

The Court: I don't think it's that close a question.

Mr. Scott: Well, Judge, would it be the Court's ruling, too, that we couldn't call him on our behalf to prove the character and reputation?

The Court: That's right.

Mr. Fleming: This time, I just request,—

The Court: (interposing) Not this man.

Mr. Fleming: —that we be able to elicit some testimony from him as to what process he followed in obtaining information which he reported, and that by avowal, not out in front of the jury, so that the record may show whether or not he knows the reputation of this officer in that community and then the Court can make its decision whether he is permitted to testify, or not to testify, and that's all we're asking the Court. We don't want to show out there in front of the jury anymore

[1927]

than anyone else, but we feel that it is quite possible that this man has competent evidence to offer and we'd like to move the Court to—

The Court: (interrupting) All right, go ahead by avowal.

EXAMINATION

By Mr. Fleming:

Q. State your name, please?

A. Frank Clifford.

Q. I believe you're employed as a reporter for the Louisville Times, is that correct?

A. Yes, sir.

Q. You're assigned to a particular type of reporting?

A. Law enforcement.

Q. And in your capacity as a reporter for the Louisville Times in the area of law enforcement, did you have occasion to write a story relative to the attitude of the public in the Smoketown area of Louisville, relative to a deceased police officer, Wilbur Hayes?

A. Yes, sir.

Mr. Fleming: For the sake of brevity, could I lead him a little?

The Court: This is by avowal anyway.

* * * * * * *

[1951]

Mr. Schroering: My opinion, Your Honor.

The Court: Sustained.

31. May we know, now, you've mentioned two press conferences, what was the first of the two?

A. I believe the first press conference was the night of the identification of the defendants.

Mr. Taylor: Your Honor, I would like to be on the record, please, and move the Court on a matter extrinsic to the now direct examination.

The Court: Approach the Bench.

Mr. Taylor: Thank you, Your Honor.

(Conference at Bench, out of hearing of jury.)

The Court: What's your motion?

Mr. Taylor: My motion is that you cause to be brought before you a person in the hall known as Miss Iona Burton, who is seeking to obtain ingress to this room. There are 14 empty seats. I have just seen them.

The Court: Don't—I don't want to

[1952]

hear this again, Mr. Taylor. You're overruled.

Mr. Taylor: Would you please listen—

The Court: (interrupting) Are you through with this witness?

Mr. Taylor: I have something helpful to the Court. Would you hear this much, please, that one of those empty seats was just taken by a policewoman known as Barbara Markwell. I'm suggesting to Your Honor that there are now 13 empty seats—

The Court: (interrupting) Mr. Taylor, I don't want to hear that motion again, sir. Overruled.

Mr. Taylor: If it please the Court, if this situation continues to change—

The Court: (interrupting) I've ruled on your motion. Proceed with—

Mr. Taylor: (interrupting) May I have strong exception, please, and may I request again that the Court bring in—

The Court: (interposing) Overruled.

Mr. Taylor: —the non-police—may I have my exception.

(End of proceedings at Bench.)

[1953]

The Court: Proceed.

Mr. Taylor: Certainly.

32. Now, you mentioned press conferences—there was a problem for the policewoman to get in the room here—which press conferences are you talking about?

The Court: Sustain the objection.

Mr. Taylor: What objection?

The Court: The Court's own objection.

Mr. Schroering: Continuing objection—

Mr. Taylor: How is he going to make a continuing objection? I don't keep talking about the same thing. What's a continuing objection? Everything I say, he objects to!

The Court: The Court sustained its own objection.

33. What was the day of the press conference you attended?

Mr. Schroering: Objection, Your Honor.

The Court: Sustain the objection.

34. What was the date of the other press conference?

Mr. Schroering: Objection, Your Honor.

The Court: Sustained.

35. Was Chief Hyde present at the press

[1954]

conference?

Mr. Schroering: Objection, Your Honor.

The Court: Sustained.

36. Was the television present at the press conference?

Mr. Schroering: Objection, Your Honor.

The Court: Sustained.

37. Was the County Judge present—I should be saying subjunctively were.

The Court: Sustained.

Mr. Taylor: Pardon my grammar.

(Whereupon, there was an outburst of laughter in the courtroom.)

38. Were other persons present at the press conference?

The Court: Sustained.

39. Do you know of any other time—

The Court: (interrupting) Mr. Sheriff, clear the back rows out of the courtroom, please.

I'll see Mr. Taylor in Chambers and this witness and the attorneys.

Ladies and gentlement, take your seats in your jury room, with the same admonition.

[1955]

Mr. Sheriff, clear it all out except the first three rows—that's out of the courthouse.

IN CHAMBERS

The Court: We're back in Chambers again as the result of Mr. Taylor's actions. He had on the stand Mr. Irv Foley, who is also in Chambers.

Mr. Foley, do you know anything about this case, other than the t.v. appearances? Do you know anything about the merits of the case at all?

Mr. Foley: I did no investigation myself. I know nothing.

The Court: All right. The Court is ruling that this witness will not testify anymore.

Now, Mr. Taylor, let me tell you something. You are going to immediately submit to this Court every witness that you have, and

[1956]

I mean in five minutes, and you are also in contempt of Court for your actions in—

Mr. Taylor: (interposing) I'm going to request—

The Court: —the Court just previous to that.

Mr. Taylor: May I request to speak to the record, please?

May I request to speak to the record, please?

The Court: I have given you till quarter till two. It is now 25 minutes till two to submit your witnesses. You can speak to the record all you want to, sir.

Mr. Taylor: At this time I would move the Court to reconsider his ruling in this regard as being prejudicial and hampering this defense, inasmuch as it causes me to have to reveal my—if you please—strategy or planning in making the defense.

The Court: That order is to the Court only, in camera.

Mr. Taylor: May I say to Your Honor, I didn't understand that was the case. I am sure that that being the case, I could rely and I'm sure have the

[1957]

Court's commitment that it would be thus held, won't it, Judge?

The Court: Absolutely.

Mr. Taylor: Thank you. Now, may I say, additionally, I have serious doubts as to the legal correctness of the order and since we have, I have, I don't know, five months of my life wrapped up in this case, and maybe more than that—

The Court: (interrupting) Before it's over, you might have a lot more than that.

Mr. Taylor: Would the Court care to amplify on the meaning of that?

The Court: The Court just made a statement.

Mr. Taylor: Sir, I didn't—

The Court: (interrupting) The Court just made a statement.

Mr. Tayor: Yes, sir, and I asked if the Court would care to expand on the meaning of—

The Court: (interrupting) I don't have to explain my comments.

Mr. Taylor: I see. I'm requesting that you reconsider and that you adjourn until tomorrow and give me an opportunity to get before our reviewing court for a Writ of Mandamus—

[1958]

The Court: (interrupting) Overruled.

Mr. Taylor: I wonder if I might finish my sentence before you overrule—

The Court: (interrupting) It's overruled.

Mr. Taylor: May I please finish my sentence, Your Honor?

The Court: You're on the record.

Mr. Taylor: Is that yes?

The Court: You're on the record.

Mr. Taylor: Thank you, Your Honor. What I was saying, before I did not finish my sentence was, if Your Honor would permit me to reach the Court of Appeals in an attempt to get a Writ of Mandamus against your ruling, which I feel is totally devastating to make a proper defense herein under the law.

The Court: Overruled.

Mr. Taylor: All right. Now, would Your Honor consider just a few more minutes and I'll, of course, remain, as ever, responsive to the orders of the Court. There is a mechanical problem here. I'll go get my list together as quickly as I can. I assure the Court I'll act in good faith. May I say to Your Honor—no, may I obtain clarification from you, Judge, that the names

[1959]

of the witnesses do not necessarily have to tell you what my—you want names, Judge?

The Court: I just want to know who you're calling.

Mr. Taylor: All right, may I be excused for the purpose you said, right?

The Court: Right.

Mr. Taylor: Thank you, Your Honor. Oh, Judge Hayes, if you please, Your Honor, and on the record, it is problematical in two aspects relative to the list that you've called for, No. 1, sir, it's still, if I've used the correct word, discretionary— it's still unresolved with me as to whether I will use certain people. I understand Your Honor will want a full list, but understand, please, I don't necessarily

guarantee that they will be used. Additionally, Judge, there are people being sought whose identity I do not know and with the Court's permission, I will call them X, Y and Z and append after their names, a very brief description of what is sought to be elicited from them. Is that satisfactory?

The Court: All right.

Mr. Taylor: Thank you, Your Honor.

Mr. Scott: Judge, could you show an objection on behalf of the defendant, William Michael

[1960]

Tinsley, to the Court's order clearing the last three rows in the courtroom.

The Court: The Court cleared the last three rows because they were back there snickering, making commotion. Everytime Mr. Tayler opens his mouth, they snicker or make motions, wave, or do something and I'm in no way required to put up with that in a court of law. I'd clear the whole courtroom, period.

Mr. Scott: Further, show that the defendant, William Michael Tinsley, renews his objection heretofore numbered 1 and renews his motion for a severance, based upon the conduct of counsel for Narvel Tinsley. This, of course, has now become so accumulative that the defendant, William Michael Tinsley's rights to a fair trial have been severely prejudiced.

The Court: Overruled.

(Whereupon, an off-the-record discussion was had.)

Mr. Taylor: Your Honor, are we on the record?

The Court: We'll go on the record again.

[1961]

Mr. Taylor: Thank you. At this time, pursuant to the order of the Court of some minutes back, to which strong exception was taken in behalf of the defendant, Narvel Tinsley, but, nonetheless, pursuant to the order of

the Court, I respectfully tender to Your Honor, with the understanding that it's tendered to the Court only and with the understanding that the information will not be furnished to the Commonwealth or to the attorneys for the other defendant.

The Court: That's true.

Mr. Taylor: Thank you, Your Honor. A list of the intended witnesses to now be called in behalf of the defendant, Narvel Tinsley, you will notice, please, that I do request since we're here, that A and B be brought in camera, if you will permit, to establish my contention of earlier, which I think perhaps irritated the Court. Notice, further, if Your Honor please, as to the given name of item D, that there is no positiveness on my part. Additionally, Your Honor will note the addition, due to an oversight on my part, in the haste of the situation of item H-1 between item H and item I. Additionally, I believe item K and L will be self-explanatory. May I further advise, in regard to item M, that I do not, at this time, have the first name of the

[1962]

subject, but hope to be able to get it. In item R, the abbreviation Det. is for Detective. I notice that the Zerox—my copy failed, but you have a clear copy, I believe, Your Honor, all the way through to Z. Item Y should be preceded by the title Detective.

The Court: Have these people been subpoenaed?

Mr. Taylor: Yes, Your Honor, I'd say in 98 percent—

The Court: (interrupting) So, they're here?

Mr. Taylor: Yes—well, Your Honor, I have made accommodating arrangements, sir, with some of the police officers so that they would not waste a day's work and they are on nearby call. Further, may I advise Your Honor there is a subpoena deficient—that's not what I mean to say—that there is not—that's still not—further, may I advise the Court, I have not as yet subpoenaed item H-1 and item D as in Dan.

The Court: I'm going to call each of these witnesses that I have marked here with a check mark to the witness stand, out of the hearing of the jury. The Court is going to question these witnesses as to their knowledge

[1963]

of this case. I'm going to—I have 18 of them. So, by the time we do that, I think probably it will be time for the jury to disperse. So, I think what I'll do is send them back to their motel room until in the morning. This is going to take a little while.

Mr. Taylor: May I say to Your Honor, would I be incorrect in saying that by so doing, Your Honor is placing its judgment as to what witnesses should be called for the defense above and beyond that of the defense lawyer for Narvel Tinsley.

The Court: The judgment of the Court is that if, for instance, No. G on your list—

Mr. Taylor: (interposing) Yes, sir.

The Court: —should know absolutely nothing about the facts of the case, then I'm not going to let him testify. I'm not going to conduct this trial as a marathon, just to see how long we can run it. Anybody who has anything material, relevant evidence to introduce, will be permitted to testify.

Mr. Taylor: May I respond respectfully to that, Your Honor. The Court will note that the defense has begun today—no, I'm corrected—I would

[1964]

like to correct myself—the defense began with witnesses late yesterday afternoon. That, Your Honor, we were into the 8th day of trial. We are now into the 9th and no such procedure was applied to the Comonwealth—

The Court: (interposing) That's true.

Mr. Taylor: —as what Your Honor is now applying to the defense, projected defense of Narvel Tinsley. May

I further implore Your Honor to consider that the theory of defense here, as has already been repeatedly stated to Your Honor, is a wide ranging theory in the circumstances hereof. If you are going to conduct such a hearing, would it be fair to suggest—it is over my objection—would it be fair to suggest that similarly, as the attorneys for William Michael Tinsley have been in camera with Your Honor and with William Michael Tinsley, and without myself being present, or being allowed to be present, would it be fair that when you conduct these—well, if you'll pardon me, I can't think of a better way to put it—this checking conversation—I don't mean that as an offensive phrase—in regard to each person on the list, that I be present and my client be present, and that the other lawyers be excluded. Let me say why, Your Honor. Now—

The Court: (interrupting) I didn't understand you.

[1965]

Mr. Taylor: I'm trying—I'm reaching for what I'm trying to say, and if I put it crudely, I don't mean anything disrespectful—

The Court: (interrupting) You mean make these other attorneys do the same thing?

Mr. Taylor: Sir?

The Court: Do the same thing—

Mr. Taylor: (interrupting) Handle it the same way you did William Michael, or else they're going to know who I'm going to call. I know that these gentlemen are not going to sit out there and spy. We have not made one another privy to our defenses, because of antagonistic defenses. We have tried to deal as gentlemen with each other, but you had assured me that you would keep it—at least I got that understanding—my strategy of defense in confidence.

The Court: You want me to exclude Michael and his attorneys when I go through this list, out of the hearing of the jury?

Mr. Taylor: Yes, sir, and the Commonwealth. I'll tell you, I could, if you thought it represented a security problem, waive my defendant being present.

The Court: I don't care about the

[1966]

defendant being here.

Mr. Taylor: That's what I'm requesting of you, Judge.

Mr. Fleming: No objection.

Mr. Schroering: No objection, Judge, if you want to listen and pass on the relevancy and admissibility and all of this evidence, I think it's within your right to do so.

Mr. Fleming: You understand we aren't waiving any objection we may have to the relevancy and admissibility of it, once we are parties to it.

Mr. Schroering: Same with the Commonwealth.

The Court: But Mr. Taylor is stating that when I do this, you'll know—well, I haven't checked everybody on here, but you will at least know some of them. Of course, if they're excluded, it won't make any difference, but some of them might not be excluded.

Mr. Schroering: So this will not develop into a discovery procedure for the benefit of Mr. Taylor in preparation of a defense, the Commonwealth would only suggest that—

The Court: I'm the one who's going to

[1967]

going to ask the questions.

Mr. Taylor: May I know if possibly before you call each party, you would feel like being guided by certain suggestions I might have?

The Court: I assume that these people are under subpoena they should be here, with the exception of the police officers.

Mr. Taylor: Yes, sir.

The Court: I'm going to have to tell Detective Boyer, or somebody, to go get these police officers.

Mr. Taylor: Well, I can help you get them, if you will permit.

The Court: Somebody is going to have to notify them all to come.

Mr. Taylor: All right, sir. I can tell you pretty much —there are quite a few of them here right now, Your Honor. Would you want me to go work on that aspect of the case?

The Court: Yes, you go work on that and I'll recess the jury.

Mr. Taylor: Yes, sir, thank you, Your Honor. May I be excused?

The Court: Yes.

* * * * * * *

[2014]

37. I noticed in there, I was trying to listen—did he tell you—you were present at this time, weren't you?

A. Yes, sir.

38. And so you recall this, I suppose, quite well, would that be true?

A. Well, it's here, I could check it.

39. All right, so I'm trying now, Detective, to check a couple of things with you. This young man, Keith White, he told you that he had lied to the policemen when they asked him if he lived there, is that right?

Mr. Fleming: Objection, Your Honor, the statement speaks for itself.

The Court: That's right.

Mr. Taylor: I just—the officer was there. He said he recalled—

The Court: (interrupting) Are you talking about outside of the statement?

Mr. Taylor: No. I'm talking about—I'm just merely asking this witness he was there when David Keith White was telling what happened, am I not correct

[2015]

that David Keith White told you that he told the policemen

when they said, "What are you doing here," that David Keith White said, "I live here."

Mr. Fleming: Same objection, Your Honor. The statement speaks for itself.

Mr. Taylor: Is that a difficult question?

The Court: Sustained. We're not going to rehash the statement. The jury can read it.

40. Let me know this from you, though, outside of the statement, David Keith White never told you that he saw Narvel with any pistol at all, did he, Jesse?

A. No, he didn't say—

41. (interrupting) As a matter of fact, what he told you about Narvel, is all included in that statement, right?

A. Right.

42. It would be accurate to say that every single thing he told down there at the Police Department, this is when the statement was getting made, right?

A. This is when the statement was made.

43. Is encompassed in that statement, right?

A. Right.

44. And he told you, in regard to Officer

[2016]

Schaefer, who was the officer who didn't fall into the car door, but the one that was standing by the car, that he saw Michael pointing a pistol at him, right, sir?

Mr. Fleming: Objection, if the Court please. This is the same thing the Court just ruled on.

The Court: Sustained.

Mr. Fleming: The statement speaks for itself.

45. And he didn't say word one to you at that time to you at that time about seeing Narvel pursuing anybody, did he?

Mr. Fleming: Same objection.

The Court: (Rapping on Bench.) All right.

46. Yes or no?

The Court: Approach the Bench, Mr. Taylor.

(Conference at Bench, out of hearing of Jury.)

The Court: The Court, out of hearing of the jury, the Court finds Mr. Taylor in contempt of Court again for his actions.

[2017]

Mr. Taylor: May I have my exception.

The Court: All right.

Mr. Taylor: May I reserve the right to speak to the record shortly?

The Court: When we have recess.

Mr. Taylor: Thank you, Your Honor.

Mr. Fleming: I want to make a motion. We again move the Court to set aside the swearing of the jury and grant a new trial to William Michael Tinsley. Mr. Taylor, in effect, is arguing the case. He was instructed by the Court to stay within that statement. He defied that admonition and went on into this line of questioning designed to argue the case, to emphasize those points which are favorable to him and unfavorable to William Michael Tinsley.

The Court: Overruled.

(End of proceedings at Bench.)

* * * * * * *

[2030]

Redirect Examination

By Mr. Taylor:

22. Well, now, we've talked about how you were assigned to stay with him. Were you at either of the two press conferences where it was announced to the world that the warrants had been taken?

A. No, sir, I was not at no press conference.

23. At any press conference?

A. At any press conference.

Mr. Taylor: Thank you. Pardon me.

24. Were you at the autopsy when—

Mr. Schroering: (interrupting) Objection, Your Honor.

The Court: Sustained.

25. Were you down there gathering evidence when the t.v. cameras were there?

A. Yes, sir, I was.

26. Isn't it a fact that down there in the alley, even before the arrests were made, a certain newsman of this city—

Mr. Schroering: (interrupting) Objection, Your Honor.

The Court: Sustained.

[2031]

27. Were there t.v. cameras there? Look at me.

A. Yes, sir, there were t.v. cameras down there.

28. Thank you, yes, sir. When Narvel Tinsley was brought in, I suppose there was a good deal of—did you feel tension and pressure in the situation?

A. Not really, no.

29. Did the defendant seem to be under a bit of strain?

A. He was visibly agitated, yes, sir.

30. He wasn't exactly what you'd call garrulous. There wasn't a great spirit of camaraderie obtained in the basement of the old Police Department, was there?

A. No, I couldn't say there was a spirit of camaraderie, no.

Mr. McCall: Show our objection to the waving of the arms of Mr. Taylor—

The Court: (interrupting) This witness is excused. I'll see counsel in Chambers. Let's take a five minute break, ladies and gentlemen, with the same admonition.

[2032]

IN CHAMBERS

The Court: Let the record show that Mr. Taylor is in contempt for the seventh time for his actions in the courtroom.

Mr. Taylor: May I respond to the record?

The Court: (No response.)

Mr. Taylor: May I please, Your Honor?

The Court: Go right ahead.

Mr. Taylor: I'd lige to state to the record—I'd like for the record to show that the Court has gotten up and left the room, closing the door behind him and that there is present in this room Bob Fleming, Mr. Rosenbaum, Mr. Schroering, Mr. Foley, Mr. Scott, Mr. McCall, and Mr. Kagin, as well as myself and Mrs. Klapheke. The Court has now returned to the room.

In behalf of the defendant, Narvel Tinsley, may the record reflect that at no time has Mr. Schroering been held in contempt—

The Court: (interrupting) I'm not going to even—don't even put this in the record. Mr. Taylor is not running this Court, I am.

[2033]

(Whereupon, there was an off-the-record discussion and colloquy, after which the following proceedings were had.)

The Court: Overruled. Let's go. Call your next witness.

Mr. Taylor: I want the record to show right now that there was a colloquy took place in this courtroom and that the Court, by direct order, stopped the reporter from taking it down. What time is it?

The Court: (No response.)

Mr. Taylor: I'm asking you what time is it?

The Court: Two minutes before 11.

Mr. Taylor: At two minutes till 11 on this—what date—October 28, 1971.

(End of proceedings in Chambers.)

[2034]

IN OPEN COURT

The Court: All right, call your next witness.

Mr. Taylor: Your Honor, may I have Chief Hyde, please?

The Court: Is Chief Hyde out in the hall?

The Sheriff: No, sir.

The Court: Call your next witness.

Mr. Taylor: I called him. Chief Hyde.

The Court: He's not here. Call your next witness.

Mr. Taylor: May I have an objection in the record, please?

The Court: Overruled.

Mr. Taylor: May I have Detective Jesse Francis?

The Sheriff: They'll have to go upstairs and check.

The Court: Pardon?

The Sheriff: They have to go upstairs

[2035]

and check.

The Court: All right, call your next witness.

Mr. Taylor: I did. It is Detective Francis.

The Court: Call your next one, he's not here.

Mr. Taylor: May I have an objection, please?

The Court: Overruled.

Mr. Taylor: Thank you, Your Honor. All right, Your Honor, my next witness is Detective Byrd.

The Court: Detective Byrd?

Sheriff: He's gone to the office.

The Court: Pardon?

Sheriff: He's gone to the office.

The Court: All right, call your next witness.

Mr. Taylor: I have, I called Detective Byrd.

The Court: He's not here. Call your next witness.

Mr. Taylor: May I have an objection, please?

[2036]

The Court: Overruled.

Mr. Taylor: May I approach the Bench, please?

The Court: Yes, sir.

Mr. Taylor: May I be on the record, please?

(Conference at Bench, out of hearing of jury.)

The Court: Other counsel please approach the Bench.

Mr. Taylor: If it please the Court, my office people and myself have, I think, complied with the law in issuing subpoenas for the attendance of these witnesses. It is part of the proper and adequate defense of my client, to which he is entitled under law—

The Court: (interrupting) Francis is here? O.K., bring him up.

Mr. Taylor: —that these witnesses be placed on this stand when I call them myself, in the order that I call them. Absent floods or Acts of God, I request that the Court permit this to be the case.

The Court: I am not going to hold up

[2037]

these proceedings waiting for a witness. If he's here he can testify, if he isn't, we'll skip over him.

Mr. Taylor: May I object to that, please.

Mr. Schroering: Judge, may I place this in the record, please? When Mr. Taylor came back off of this last recess, he indicated his next witness was going to be Garrett. No—apparently no arrangements have been made to notify any of these people as to the approximate time they were to be here. I noted with some interest he meticulously avoids calling any of the witnesses that are sitting outside the courtroom. By process of elimination, he calls only those he knows are not sitting out there, obviously for the purposes of delay. Lieutenant Garrett is outside—

The Court: (interrupting) We're not going to permit that.

Mr. Schroering: And so is Francis outside.

Mr. Taylor: Your Honor, I'll respond to that?

The Court: Here's Lieutenant—

Mr. Taylor: (interrupting) I'll

[2038]

respond to that, Your Honor, in the record. I totally deny the allegations.

The Court: All right. Here's Lieutenant Francis.

Mr. Taylor: Commonwealth Attorney, I have no idea who's out there. When I'm out there I'm doing something else. Mr. Schroering has incorrectly stated to Your Honor the situation and Your Honor knows it, because these people were, in the main, brought before you yesterday and recognized to be back here this morning. Additionally, their subpoenas so state and what Mr. Schroering told you is not factually true.

(End of proceedings at Bench.)

* * * * * * * *

[2068]

JAMES GARRETT, called as a witness by the defendant, Narvel Tinsley, after being first duly sworn, testified as follows:

The Court: All right, let's go.

Direct Examination

By Mr. Taylor:

1. Your name, sir, is Lieutenant James Garrett?

A. Yes, sir.

2. And you are a police officer in the City of Louisville?

A. Yes, sir.

Sheriff: Judge, he (one of Mr. Taylor's

[2069]

aides) was not searched as everyone else was.

Mr. Taylor: Search him right now.

The Court: All right, go ahead, Mr. Taylor. Get going.

Mr. Taylor: May I be on the record?

The Court: Let's move it.

Mr. Taylor: I don't want to move it to the exclusion of—

The Court: (interrupting) All right. Let's go back in Chambers again. I'll see counsel in Chambers. Bring the witness.

IN CHAMBERS

The Court: The Court finds Mr. Taylor in contempt of Court again.

Mr. Taylor: May I speak to the record, Your Honor?

The Court: No, sir. What are you going to ask this witness?

Mr. Taylor: What am I going to ask him?

The Court: Yes, sir.

Mr. Taylor: Yes, sir. All right, sir,

[2070]

I—

The Court: (interrupting) Speak up, I can't hear you.

Mr. Taylor: All right. Can you hear me now?

The Court: Yes, sir, keep your voice that way.

Mr. Taylor: All right, sir. I have a total of one, two, three, four, five, six, seven, eight, nine questions, Your Honor, that I would like to ask.

The Court: Read them into the record.

Mr. Taylor: Your Honor, I'm going to take strong exception to being required to do that.

The Court: All right. He waives them, then. You're excused, Lieutenant Garrett.

Mr. Taylor: Wait—

The Court: (interrupting) You want to read them into the record?

Mr. Taylor: Are you putting me on an either/or basis?

The Court: That's right.

Mr. Taylor: May I say that reading them in the record is done over the objection of the defendant, Narvel Tinsley. May the record so indicate, please?

The Court: So indicated.

[2071]

Mr. Taylor: All right. I wanted to ask Lieutenant Garrett if, indeed, he was head of Homicide Department at that time.

The Court: That's been covered already.

Mr. Taylor: And then—are you saying that if a witness has covered the point—

The Court: (interrupting) That's exactly what I'm saying.

Mr. Taylor: You're not going to—

The Court: (interrupting) Every witness that you've introduced so far today has added nothing to this case. Every witness that you've introduced, most of them have been on the stand already. You're not going to rehash this. If the question has been asked and covered, the Court is not going to permit you to go into it again.

Mr. Taylor: May I say, Your Honor—

The Court: (interrupting) There comes some point in time that this thing has to end. I cannot permit any attorney to put a man on, then he gets off, then put him back on, and he gets off and he puts him back on on the same,

[2072]

same testimony.

Mr. Taylor: May I respond to that, Your Honor?

The Court: What's the other questions?

Mr. Taylor: I'm requesting permission—I have the other questions, Your Honor, I'd be glad to read them, sir.

The Court: All right.

Mr. Taylor: What I wanted to say, relative to what the Court just said, Your Honor will know that we are in the 10th day of trial and I didn't take the defense until eight and a half, in other words, until after noon day before yesterday and I'm about ready to close. I, at lunch, went through my witnesses, trying to do what is right, from the standpoint of everybody else's rights, but on the other hand, I want to represent—

The Court: (interrupting) I'm not trying—I'm just trying to get this thing moving and get these witnesses off who have already testified. Lieutenant Garrett has already testified, he's the head of Homicide.

Mr. Taylor: Judge, here's my problem Your Honor, and I really don't want to irritate the Court about this and I'm not putting this part of things in the

[2073]

motion. I've already put it in. You've got empty seats there and I work with a lot of students. Nobody ever asked me to do it, but that's the way it ended up being because we are as you know, not receiving a fee in this case. I'm not saying that's any different from the other lawyers on the defense side. Now, my helpers have been systematically excluded from the Court. There's a young student out there who was just placed out of the courtroom. You've got a whole row of empty seats. That's—

The Court: (interrupting) There's nobody that I know of that's been denied a seat in the courtroom, who wanted to get in.

Mr. Taylor: Your Honor, would you—

The Court: (interrupting) And it doesn't have a thing to do with this case. I'm not even interested in listening to it. I couldn't care less who's sitting out there in the audience.

Mr. Taylor: Your Honor, audience isn't particularly the word.

The Court: And the audience, what you're referring to, the audience, I think, if a count were taken, it is predominantly black. Let the record show that.

[2074]

Mr. Taylor: Your Honor, Charles Schultz is as Caucasion as you or I and there's a row of empty seats and he was just in your clear view and refused a seat. I wish you'd let him come in the courtroom.

The Court: I don't have any objection. Tell him to go—but he goes through the same procedure everybody does and he's searched, at the Court's order, and he's welcome to sit anyplace he wants to, as long as he's behind the rail.

Mr. Taylor: All right, thank you, Your Honor.

The Court: I thought I asked the police officer and he said—I said, "Is everybody in that wants in," and he said, "Yes."

Mr. Taylor: He was not correct in that. That's where the problem is.

The Court: O.K., let's go on.

Mr. Taylor: I want to ask Jim Garrett about fingerprints. It's true the officer's been here—

The Court: (interrupting) They've stipulated that there are no fingerprints in the case whatsoever on anybody.

[2075]

for Officer Garrett to identify weapons, especially the unfired 38.

The Court: We've already gone through all of that. Rossi has been identified, every gun in here has been identified by this officer.

Mr. Taylor: May I just ask, with the Court's permission, ask Officer Garrett and I'll waive—just informally.

EXAMINATION

By Mr. Taylor:

Q. Jim, you were in charge of the whole investigation, isn't that substantially so?

A. Yes, sir.

Q. You would be the gentleman who had control of the whole file, right, sir?

A. Yes.

Q. I don't know what chain of command is supposed

to follow, but Frank is a subordinate of yours, is that right, sir?

A. Yes, sir.

Q. The records and investigative findings in this matter would then be in your whole file, right, sir?

A. Yes, sir.

* * * * * * *

[2169]

204. But you speculated if you didn't, he might shoot you right on the spot, is that what you thought?

Mr. Schroering: Objections, he's putting words in his mouth.

Mr. Taylor: No, I want to know—

The Court: (interrupting) He testified to this.

205. So, actually, you didn't move the body to conceal the evidence for the Tinsleys, or you didn't move the body to conceal evidence that would relate Hamp Thomas to a crime, thus perhaps qualifying yourself as an accessory after the fact?

A. No, because I didn't move the body the day before.

206. Have you been charged with accessory after the fact in Hamp's case?

A. No.

207. Well, what charges are against you?

The Court: He testified none.

208. None?

A. No.

209. You haven't been charged?

A. No.

210. Have you talked with this nice police officer—

[2170]

Mr. Schroering: (interrupting) Your Honor, I want to interpose an objection.

(Whereupon, there was an outburst of laughter in the courtroom.)

The Court: Sustained.

211. Have you talked with the police officer?

A. Yes.

212. Have you been up there and talked with them a little bit?

A. Yes.

213. All right, now, as you said, you moved the bodies in the Hamp matter. Were you in on the theft of them when they stole from the bodies?

A. No.

214. Did you know Hamp got that watch?

A. No.

215. Did you know Hamp did things—

A. (interrupting) The bodies was moved before I got there—from the alley.

216. Did you move both of them?

A. No.

217. Did you know that Hamp moved both of them?

[2171]

A. I asked Hamp what to do about them and he said, "One of them slipped," or something.

Mr. Taylor: One of them what—

Mr. Fleming: (interrupting) This is what we're objecting to.

The Court: Sustained. Don't tell us anything Mr. Hamp (sic) told you, sir.

218. When you went back though for the gun, this was to help the Tinsleys, wasn't it?

A. Yes.

219. And they had asked you to do it and you knew then that it appeared they were implicated in two murders, didn't you?

A. I don't know if they shot the police or not, just hearsay.

220. As far as you're concerned, you really haven't got any evidence to offer on that, do you?

A. No.

221. On the other hand, on the other hand, the actual fact is you knew they were attempting to conceal themselves to keep from being arrested, didn't you?

Mr. Schroering: Your Honor, how many times are we going over—

Mr. Taylor: (interrupting) Your Honor, I want this young man to admit that you should have been

[2172]

charged with accessory after the fact—

The Court: (interrupting) Sustained.

Mr. Schroering: Objection.

Mr. Taylor: —and you haven't been, isn't that true?

Mr. Fleming: Your Honor, the jury should be admonished.

Mr. Taylor: Pass the witness.

Mr. McCall: Let me ask one question.

(At Bench, out of hearing of Jury.)

The Court: Let the record show that Mr. Taylor is in contempt of Court.

(End of proceedings at Bench.)

The Court: Are you about finished?

Mr. McCall: Yes, Judge.

* * * * * * *

[2241]

I want to try to close. I want to apologize to the Court if I have been intemperate and state to the Court that it would only have been because of the desire to see justice done and the clear conviction and belief that my client is innocent. I want to tell you that life has moved on since this case began. There's been a wedding in my family and

a funeral of a dear friend of mine. I want to say furthe
it's a lot more glamorous, a lot more pleasing to the crow
to be an official and thunder about dead bodies and thi
blue lines. But that's not always where the truth is,
think.